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Vol. V

No. 10

Cabinet Form of Government

JULIA E. JOHNSON, Compiler

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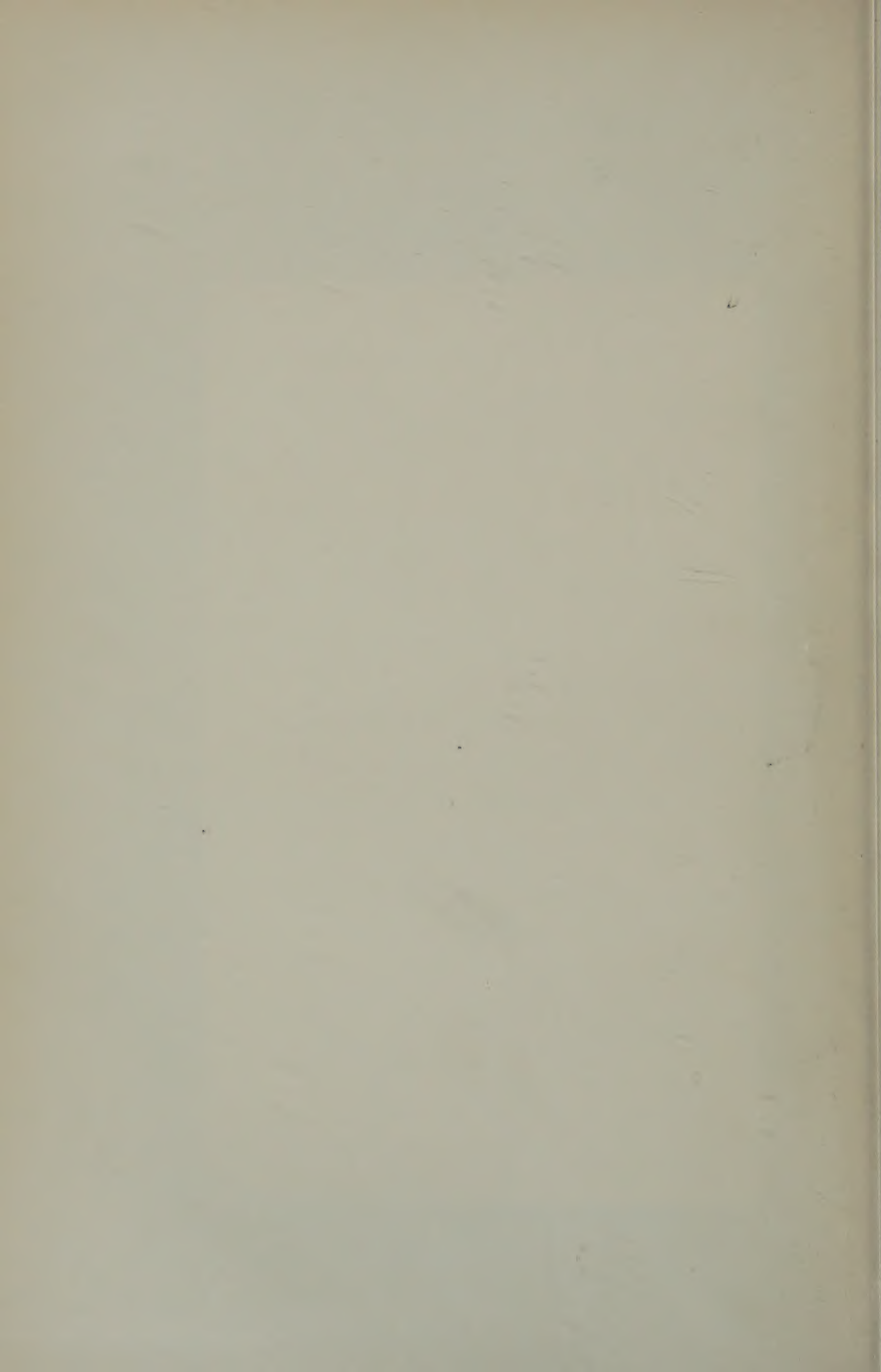
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THE REFERENCE SHELF

Volume V

Number 10

CABINET FORM
of
GOVERNMENT

Compiled by
JULIA E. JOHNSEN



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INTRODUCTION

The minds of students of political science and observers of the practical workings of government have long revolved around the problems of representative institutions and the forms and machinery of democratic government. This interest has been augmented wherever there has been specific occasion for dissatisfaction with and criticism of the functioning of government, and whenever the endeavor has been made to fasten upon some feature or other of its established forms the responsibility for its failure to live up to the expectations of the people. The two leading forms of representative government, those of Great Britain and the United States, both of which have served, with modifications, as models for the functioning of popular government in other countries, have frequently been subjected to analysis as to their relative merits.

The cabinet form of government of Great Britain is distinguished by the close union of administrative and legislative powers. The supreme ruling power is the cabinet, subject to close supervision by the legislature. The cabinet is selected from and is responsible to the legislative branch. Each is able to cause the dissolution of the other, and a new appeal to the electorate for support or a new government. In addition to administrative duties as heads of important departments of government, the members of the cabinet are members of the legislature and have important legislative functions in initiating and directing legislation; they also assist in formulating and carrying out the national policy. The presidential form is based on a single strong executive elected by and responsible to the people. In the

United States there is a fundamental separation and independence between the three leading departments of government, executive, legislative and judicial. The cabinet is an extra-constitutional body, selected by and responsible to the President. The main function of its members is to act as heads of governmental departments.

The proposition has been advanced by prominent statesmen as to whether certain failings in our government would not be overcome or remedied by an approximation to the cabinet form of government, more particularly by a closer unity and cooperation between the executive and legislative, and by strengthening the position of cabinet members in their relation to the legislative branch. The admission of the cabinet to the floor of Congress has been advocated in several instances by bills introduced into Congress.

The present volume of the *Reference Shelf* is supplementary to Reference Shelf, Volume 1, number 6, of the same title, by Dormin J. Ettrude. As the former volume is now out of print and will be inaccessible to many, the full bibliography has been carried over to the present volume and brought down to date. Three especially valuable reprints of the former volume have been retained, with minor changes. With these exceptions, entirely new matter has been used. Reprints, bibliography and brief follow the customary plan of the debaters' series in being arranged as general discussion, affirmative or material favoring the cabinet form, and negative.

JULIA E. JOHNSEN

November 21, 1928

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BRIEF

RESOLVED: *That the cabinet form of government is preferable to the presidential form.*

INTRODUCTION

- I. It has been said that one of the greatest political problems of the time is to reconcile representative institutions with good government.
 - A. Criticism of popular government has been widespread and persistent.
 - B. It has not always functioned as the people desire.
- II. The two leading forms of representative government are the cabinet or parliamentary form originating in and best exemplified by the government of Great Britain, and the presidential form adopted in and exemplified by the United States.
- III. Distinguishing characteristics of the two forms:
 - A. Cabinet.
 1. The main essential is the close unity existing between the executive and the legislative departments.
 2. The cabinet is the dominating section of the government. Its members are selected from and are responsible to the legislature.
 3. The members of the cabinet, in addition to administrative duties, have seats in the legislature and may initiate and guide legislation.
 4. In case of failure to agree in policy the tenure of office of either the popular branch of the legislature or of the cabinet may be cut short at any time by an appeal to the electorate.

B Presidential government.

1. The three functions of government, legislative, executive, and judicial, are separate and co-equal.
2. The president is the executive, elected by and responsible to the people.
3. The cabinet is selected by the president and is responsible to him. It has no direct relation to the legislature and is not expected to attend its sessions.
4. Fixed tenure of office precludes appeal to the electorate between established elections.

AFFIRMATIVE

I. The cabinet form of government is preferable to the presidential form.

A. Much dissatisfaction has been felt with the workings of representative government in our country.

1. Certain undesirable conditions, weaknesses and incongruities exist.

a. There is slowness of response in carrying out policies desired by the people.

b. There is much friction in government due to the separation of powers.

(1) It extends, at times, to deadlock and stagnation.

(2) Legislation and public policies suffer.

c. The government is weakened in practice and in popular esteem.

B. It has been felt that the cabinet form of government, or an approximation to it, would remedy many of the disadvantages peculiar to presidential government.

1. A closer connection between the executive and legislative departments would establish more harmony and efficiency.
 2. The advantages of cabinet government have been pointed out by many prominent public men.
 - a. Wilson, Taft, Root, Hughes, etc.
 3. The cabinet form of government has been widely approved elsewhere.
 - a. It has been adopted in many countries abroad.
- C. The establishment of the essentials of cabinet government would be in greater accord with the principles of good democratic government.
1. Good democratic government requires full and free expression to the will of the governed.
 - a. This is obstructed by our form.
 2. It requires adequate means of change in case of failure to represent.
- D. Our conditions have materially changed since the establishment of our government with its principle of the separation of powers.
1. We have grown immensely in size, population, wealth and power.
 2. Rapid communication has been established in place of the former slow communication.
 3. With such growth and increase in the complexity of modern life it would seem reasonable to modify political forms.
- II. The British form of cabinet government gives more efficient, responsible and desirable government than the American system.
- A. The English cabinet method of legislation is more efficient than the American system.

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1. It is better constituted to give expression to the will of the people.
 - a. The party unity gives the majority real control.
 - (1) This enables it to carry out the policies on which it was elected.
 - b. It gives the people more vital touch with public affairs.
 - (1) Party issues are kept constantly before the people.
 - (a) The party in power may have to appeal to the people at any time for re-election.
 - (2) Voters are given definite issues to vote upon, one at a time, instead of the confusing policies and personalities that characterize American elections where real issues may seldom get definitely before the people.
 - (3) It gives less encouragement to the cynicism and apathy that result from inability to better conditions, however great the evil.
2. Legislative measures are more readily enacted.
 - a. The majority in the legislature and the cabinet work hand in hand.
 - (1) The administration is thus enabled to put through legislation that is needed.
 - b. Bills are referred to appropriate departments, not to irresponsible committees.
 - (1) Every bill presented by the ministry must be acted upon.
 - (a) It cannot be obstructed, as in Congress.

- c. Fair consideration of legislation is not sacrificed.
 - (1) The system encourages conservatism and deliberation.
 - (a) The minority or opposition party is always on the watch to discredit measures for its own advantage.
 - (b) To avoid defeat, as sound a case as possible must be presented.
- B. The American system of legislation is subject to many evils.
 - 1. There is no common policy or responsibility.
 - a. Bills emanate from hundreds of sources and are passed haphazard.
 - 2. Lack of coordination between the legislative and executive branches is productive of inefficiency and incongruity.
 - a. The executive branch cannot readily convey its needs to Congress.
 - (1) Its influence must be exercised indirectly.
 - b. The legislature cannot readily question the executive departments as to their needs.
 - c. There is no certainty that however well known and reasonable the needs of the executive branch, they will be met by the legislature with appropriate legislation.
 - (1) Congress may pass legislation the opposite to that wanted.
 - d. The lack of coordination is especially felt in financial matters.
 - (1) The legislature may refuse the administration money needed for the conduct of its functions

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- or reduce it below the point of efficiency.
- (2) It may, on the other hand, grant money extravagantly and wastefully elsewhere, for political expediency.
3. Congressional government is government by committee, and this is undesirable,
- a. Committee government cannot, in its nature, be representative.
 - (1) Membership of committees is subject to the disposal of a small group of elder statesmen, or determined by seniority.
 - (2) It is minority government.
 - (3) It may represent views directly contrary to public sentiment or to the majority of elected representatives.
 - b. Committee government is detrimental to well-considered legislation.
 - (1) The fate of measures depends largely on the committee to which they are referred.
 - (a) A committee may be responsible and fair-minded or the reverse.
 - (b) Bills may be buried in committee and never discussed.
 - (2) If bills are reported favorably from committee, they may be passed largely for that reason, and not by reason of merit shown by debate.
 - c. Committee government is, in a measure, secret government.

- (1) Its proceedings are not fully open to public view.
 - (2) It subjects public business to hidden influences, factional demands, etc.
- C. The English cabinet form is preferable to the presidential form as regards administrative functions.
1. It gives superior leadership.
 - a. The cabinet is usually composed of men of experience who have won their place through leadership in their party, public service, and capacity.
 - (1) Under the presidential system the executive is not usually a party leader, and there is no assurance that he will have superior training for the conduct of affairs.
 - (a) He may be selected for distinctly negligible qualities.
 - (b) His choice of cabinet determines the quality of the rest of his administration.
 2. Cabinet government gives greater responsibility in administration.
 - a. Ministers must accept responsibility for acts of the government.
 - (1) There is no diffusion or evasion of responsibility as under the presidential form.
 - (2) Members of the Commons exercise a constant supervision over the executive departments.
 - (a) Here there can be no such

supervision, although there can be congressional investigations.

- (3) Collective responsibility causes each colleague in the cabinet to be solicitous as to the general policy.

- (a) Under the presidential system the cabinet member is responsible to but not with the president, and can have no influence over him or over his fellow cabinet members.

- (4) The need for constantly defending policies further encourages responsibility under the cabinet system.

- (5) The penalty of an unpopular policy is possible loss of office under the cabinet system.

- (a) Under the presidential form there is no assurance that even if responsibility for an unpopular course can be definitely fixed action be taken upon it.

- (x) Except for the gravest offenses, there is little recourse except to wait for the end of the term of office.

- (y) When a new election comes, it may be forgotten, or, if not forgotten, other political expediency may preclude accounting.

3. The cabinet form secures the highest degree of efficiency in administration.

a. It secures harmony and unity.

(1) The administration can obtain the legislative and budgetary support it requires.

(2) Members out of harmony with the administration resign.

(3) When the ministry cannot carry out its policies through want of support it is dissolved, and a new ministry installed which can.

D. The cabinet form of government is reasonably free from disadvantages.

1. It is stable.

a. There is a permanent nucleus of public servants to preserve the continuity of governmental operation and freedom from disorganization during change of heads of government.

2. It is flexible.

a. In the great war it was able to adapt itself by evolving an inner cabinet.

III. It would be desirable and practicable to adopt certain features of the cabinet form of government.

A. A change to permit cabinet officers to sit in Congress would be desirable.

1. It would place the legislature and the administration on a higher plane.

a. The direct advocacy of measures on the floor by cabinet members would be beneficial.

(1) It would substitute direct cooperation for indirect, and do away with extra-legal methods.

(2) It would substitute publicity for privacy.

- (3) It would educate Congress, the cabinet, and the people.
 - b. It would raise the quality and be a beneficial check upon the cabinet.
 - (1) Its members would need to be selected with certain important additional qualifications in mind.
 - (a) The ability to present measures, defend policies, and answer questions on the floor.
 - (2) They would be in constant touch with leaders of their party, under constant useful criticism of opposing parties, and constantly on guard as to the soundness of their actions.
 - (3) It would evolve leadership.
 - (4) It would dissipate the jealousy and suspicion arising from the present detachment.
 - (5) There would be greater chance of departments receiving fair treatment in legislation and appropriation.
- B. A change to permit cabinet officers to sit in Congress could be easily accomplished.
 - 1. It could be arranged in strict accordance with the Constitution.
 - a. No amendment would be necessary.
 - (1) It could be effected by the simple alteration of the rules of the two Houses.
- C. Other changes could be readily made without fundamental alteration of our government.

NEGATIVE

- I. The cabinet form of government is not preferable to the presidential form.
 - A. The fundamental issue in representative government is not so much to secure the rule of the people as to secure the most worth while representative government.
 1. Government should, and to a large extent must, be left to representatives in whom the people have confidence, subject to reasonable checks.
 - a. Experts in government are better able to understand issues and conditions.
 - (1) The people have neither the time nor the inclination to study governmental affairs so as to judge fairly.
 - b. A "head" should really direct, and not be a mere mouthpiece of popular demand.
 - c. We can attract worth while men in government only by giving them initiative and opportunity to formulate and carry out policies.
 2. Our democracy is not a pure democracy but a representative one.
 3. No government is perfect.
 - a. All have defects brought to light by the shortcomings of those administering them.
 - b. It is sufficient that government should be relatively free from defects and best adapted to conditions where it exists.
 4. The only real expression to the will of the people is such a measure as would enable them constantly to give judgment on specific acts.

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- a. For example, the initiative and referendum.
 - B. Presidential government is well adapted to our conditions, where it exists at its best.
 - 1. It is better adapted to a large country.
 - a. Our interests require much greater and more varied legislation than is required where the cabinet government exists.
 - 2. It has met variable and difficult conditions in the United States for nearly a century and a half.
 - 3. It was founded on well-considered concern for liberty and safety.
 - a. Separation of powers and the system of checks and balances prevent misuse of government to a large extent.
 - b. It is safeguarded by the Constitution.
 - c. Safety is of more concern in its structure than speed.
 - (1) It gives opportunity for reflection and second thought.
 - C. The presidential form has been taken as a model by many new republics.
 - 1. Most American republics have adopted it.
 - 2. The cabinet form, where it exists, is modified in many instances to include presidential features.
- II. Cabinet government exhibits many weaknesses and defects.
- A. Legislatively.
 - 1. It is destructive of truly representative government in legislation.
 - a. It weakens the legislature.
 - (1) It gives too much power to the cabinet.
 - (a) In England power has

- passed from the Commons to the cabinet.
- b. It is based on partisanship.
 - (1) It is dependent for its best on strict party lines.
 - (a) These are breaking down.
 - (2) Partisanship represents an immense waste of time and effort in legislation.
 - (a) There is unending conflict between the party in power and the opposition.
 - (b) Legislation is sacrificed to interpellations and otherwise delayed and obstructed.
 - c. Legislators become mere tools of party expediency.
 - (1) Power comes to be held by the minority which rules the party.
 - (2) Party discipline is hostile to the legislature as an arena of free criticism and debate.
 - (3) Members are held in line by party "whips" instead of voting upon measures on their merits.
2. Cabinet government does not insure better legislation.
- a. All important legislation is prepared by a minority composed entirely of members of one party.
 - (1) So long as party harmony is maintained, most legislation desired by such a minority may be passed.
 - b. The power of dissolution is a drawback to well-considered legislation.

- (1) Members of the majority party cannot afford to dissent on any but the most important measures, but must stand solidly for them or risk a dissolution.
 - (a) A new election entails great expense in a new appeal to the electorate, and the possible loss of members' seats and break in their career.
 - (b) It may mean the failure of all other measures the majority party has at heart.
 - (2) A poll of the people does not necessarily mean that measures they want will succeed.
 - (a) They can vote only on one issue and must accept all other policies.
 - (b) An appeal to the people is held only when a split occurs in the party.
- B. The cabinet system has administrative defects.
1. It lacks ready adaption to great emergencies, such as war.
 - a. At such times a practical dictator, is more useful than a council.
 - b. The government could be turned out of office during the critical period.
 - c. The English government found it essential to modify its form for the prosecution of war.
 2. The cabinet government lacks continuity of policy.
 - a. The cabinet can never count on carrying out a promising policy without

being upset by a change in government.

3. There is a great waste of administrative ability.
 - a. Instead of able men being kept, the cabinet must stand or fall together.
4. The ministry is weakened by faction.
 - a. It is more bound by party ties than the executive under the presidential form.
 - (1) It is constantly under pressure to shift or modify its position with a view to party support.
 - (2) It is more tempted to give consideration to what will please adherents and catch votes, rather than benefit the nation.
 - (a) It has more immediate incentive to seek popularity.
5. Responsibility is over-emphasized.
 - a. The legislature has more incentive to be docile than to vote down the ministry.
 - (1) Such a course is likely to result in the dissolution of the legislature itself, and to vote the majority and their party out of power.
 - (a) It is likely to be done only as a last resort.
6. Cabinet government is unwieldy and has a tendency to increase in size.
7. Cabinet government does not necessarily secure better men in office.
 - a. Ministers may rise to power more by oratorical ability than by real capacity.
 - b. The presidential system can select

outstanding men when the people demand it.

8. Cabinet government has not worked satisfactorily in most places outside of England.
- C. The presidential system has many benefits.
 1. Its legislative methods have merits.
 - a. Measures are presented by all parties.
 - (1) They represent varying knowledge, territory and conditions.
 - b. The merits of specific measures, rather than party lines, are generally considered.
 - c. The committee system is essential to the efficient consideration of measures in a large nation.
 - (1) Debate cannot take place before the Houses as a whole.
 - (a) It is a physical impossibility to discuss all the measures presented.
 - (2) Committee discussion is detailed and thoroughly practical.
 - (3) If bills are not reported favorably it is right to bury them.
 2. It is a beneficial form on the administrative side.
 - a. It provides an independent executive, but not a irresponsible one.
 - (1) In practice he cannot disregard his own and his party's interests.
 - (2) His power and independence increase his sense of responsibility.
 - (3) The dignity of his office is increased.

b. Administrative stability, efficiency and influence are provided.

(1) He can carry out promising policies without change of administration.

(a) Four years, and possibly more, can be relied on.

(2) He can select an able cabinet to assist him.

(3) Actually and practically he has extensive powers of direction and control.

(a) As a national leader he exercises great influence publicly through speeches, messages to Congress, etc.

(b) He can exercise influence over legislation.

(w) He has friends and spokesmen in both Houses.

(x) By an appeal to public sentiment pressure can be exerted upon members of Congress to support measures.

(y) He has patronage at his disposal.

(z) He can, by veto, arrest legislation that does not meet his approval.

(4) He can shake himself free from party lines more easily than a cabinet.

(5) In time of war a president is better than a cabinet.

III. Cabinet government would be neither desirable nor practicable under our conditions.

A. It would not be desirable to seat the cabinet in Congress.

1. It would be a radical change.

a. It would be a violation of our principle of the separation of powers.

b. It would be detrimental to our form of government.

(1) Would weaken our system of checks and balances.

(2) Would weaken our chief executive.

(3) Would lead to confusion.

(4) Would weaken the effect of tradition, which is itself a great power.

c. It might lead to a complete change in our form of government.

2. It is difficult to see what would be gained by putting the cabinet in Congress.

a. It would not materially improve cooperation between the two branches.

(1) There already exists a reasonable degree of cooperation.

(2) It would not abolish private negotiation.

(3) It is well known what bills the administration favor, and they do not lack means of defending them.

(4) Cooperation depends fundamentally on men.

b. It would introduce other evils.

(1) Cabinet officers would learn "polite evasion."

B. Many remedies for defects of government are at hand, without radical change.

1. The need exists to put in office men of marked ability and high character.
2. There should be steady inculcation of regard for public welfare in public life, and education and in discussion of public policies.
 - a. Government is what the people make it.
3. Specific reforms can be instituted in legislative and other procedure under presidential government.
 - a. Rules of the Houses can be reformed.
 - b. The "lame duck" Congress can be abolished.

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GENERAL DISCUSSION

MINISTERIAL RESPONSIBILITY VERSUS THE SEPARATION OF POWERS¹

Formerly political scientists were inclined to criticize the American theory and practice of the separation of powers in the federal and state governments and to commend instead the cabinet or parliamentary form of organization. Thus Walter Bagehot, Sir Henry Maine, Woodrow Wilson, Frank J. Goodnow, along with many others, pointed to the advantages of cabinet or parliamentary government over presidential government as developed in the United States. A consensus of opinion was expressed by Wilson who said, "As at present constituted, the federal government lacks strength because its powers are divided, lacks promptness because its authorities are multiplied, lacks wieldiness because its processes are roundabout, lacks efficiency because its responsibility is indistinct and its action is without competent direction."² At one time the American plan of separation of powers was compared unfavorably with the French system in which governmental powers were divided into two branches—a policy-forming branch or "politics" and a policy executing branch or "administration."³ On another occasion the tripartite system of the separation of powers was charged with responsibility for much of the political corruption prevalent in American politics.⁴ The same theory of separation has often been condemned as requiring too many checks and balances

¹ From article by Charles Grove Haines, University of Texas. *American Political Science Review*. 16:194-210. May, 1922.

² Wilson. *Congressional Government*. p. 318.

³ Goodnow. *Politics and Administration*.

⁴ Ford. *Cost of the National Government*. chap. vi.

and as involving a do-nothing policy for legislative and executive officers.⁵ It has been not uncommon for practical statesmen, for teachers of government and others interested in public affairs to recommend the adoption of a modified form of cabinet government for federal and state governments in the United States.

Although the lack of direct connection between the legislative and executive departments of the federal government has resulted in such obvious weaknesses and incongruities that many public men have urged important modifications of the present arrangements, and although the same conditions were, in part, responsible for the impotence of the federal government to deal effectively with the problems of peace and reconstruction, political developments of recent years have tempered somewhat the opposition to the American plan of separation of powers and have dulled the enthusiasm of the advocates of cabinet government. For example, it was freely predicted in England that even before the war, cabinet government was breaking down and that something of a radical reorganization was necessary. The cabinet, said Lord Lansdown, "became an unwieldy body. . . . If only a few of them took part, the cabinet ceased to be representative. If many of them took part, the proceedings tended to become prolix and interminable, and it is a matter of common knowledge that reasons of that kind led to the practice of transacting a good deal of the more important work of the government through the agency of an informal cabinet." It is a matter of common observation that the weaknesses of cabinet government revealed before the war were greatly augmented and resulted in an almost complete breakdown of the cabinet system during the war. The gradual evolution of the inner cabinet and the construction of an imperial cabinet left comparatively little of the former system in effect in the last years of the conflict. In the light of

⁵ Howe. "The Constitution and Public Opinion," in *Proceedings of the Academy of Political Science*. p. 7. October, 1914

this experience Englishmen have seriously considered whether, with the former cabinet system restored, it would not be advisable to provide that in time of war cabinet government should give way to a dictatorship modelled somewhat after the presidential office in the United States. In other respects Englishmen have been considering some transformations of cabinet government which would bring their governmental machinery nearer to the form prevailing in America.

Cabinet government, it is well known, has not worked satisfactorily in France, and some French writers have been uncompromising critics of the system. But these criticisms savored of an academic flavor until the trials of war and reconstruction emphasized anew the defects of this form of organization. From these experiences as well as from the trend of politics prior to 1914, Frenchmen have come to favor two proposals which would inaugurate in France a separation of powers modelled in certain essential respects after the American plan. The first of these proposals, expressed in the language of President Millerand, is that the nation's will "manifested by the voice of its representatives, needs, in order to be accomplished and respected, a free executive power under the control of Parliament."⁶ It is the express intention of the newly elected president to participate of his own initiative in the foreign affairs of the nation and to exercise in other respects a "free executive power," a policy which, if carried out to any considerable extent, will have a tendency to change the government of France in the direction of presidential government. The other proposal, also referred to in the address of President Millerand, is the establishment of an independent judiciary with the power to review legislation along lines similar to the practice of American courts. Those supporting this proposal are in control of the French government, and it is thought to be only a matter of time until

⁶ From Report of the Machinery of Government Committee, Lord Haldane, chairman (1918).

either by amendment to the constitution or by judicial interpretation based on the former declarations of rights French courts will be exercising the power of judicial review of legislation. With a free executive power and an independent judiciary each modelled largely after the American system, the French government will no longer have real parliamentary government.

The French system was formerly praised in America as involving a combination of the legislative and executive departments in the formulation of governmental policies and the establishment of a system of legislative supremacy. Administration, or the carrying out of the governmental policies, was in this system exercised by administrative officers with the aid of the judicial department which was regarded as a branch of the administration. More recently a French authority has called attention to the fact that leading Frenchmen look with admiration upon the American system with its tripartite division of powers, legislative, executive and judicial, along with the principle that judges shall pass on the constitutionality of legislative acts which establishes a doctrine of judicial supremacy or government by judges.

The political thinkers in any country are likely to be conscious of the defects of their peculiar institutions and to view with admiration the practices of foreign governments with which they are on the whole less familiar. It seems that a superficial examination of the French system of government by Americans frequently leads to an admiration of that system and the conclusion that it is superior to our own. So the leaders of French political thought with but a slight knowledge of the practices of American institutions are disposed to advise their fellow country men to adopt the American theory of the separation of powers. The observation that Frenchmen are seeking to adopt certain features of the American plan of separation of powers; that Englishmen would like to provide an arrangement similar to the

American presidential system to meet the extraordinary conditions of war; and that many Americans look to England and France for guidance to remedy the defects of their plan of separation of powers seems to point to the fact that our theories and traditional conceptions on this subject need to be revised.

The principle of the separation of powers in practice has resulted in three points of view and methods of interpretation which have led to quite different results. These are: the French theory, the English theory and the American theory.

Although the government of France was affected by the eighteenth century theories of the separation of powers and particularly by the proposal of Montesquieu relating to the separation of powers, the interpretation of these eighteenth century theories led in France to the proposition that courts ought not to interfere in the exercise of legislative powers and are not privileged to suspend the execution of laws. The French have, therefore, denied to the courts the right and duty of passing on the validity of legislative acts, claiming that this would be an interference with the independence of the other departments. Under the present constitution France has continued this interpretation and has adopted parliamentary government, with the result that France is governed under what is known as legislative supremacy. But owing to the fact that the French system of government is based on the Roman civil law, and that Frenchmen are accustomed to methods and practices whereby executive and administrative officers perform a much larger part in the making and enforcing of law than is customary in Anglo-American countries, the legislature is much more limited in its scope of action and the administration consequently enlarged in its functions. In fact, in all countries which have adopted as a basis for government the Roman civil law, executive and administrative officers participate to a much larger extent in the forming of

government politics (with almost complete initiative in the framing of laws and in determining the details of administration), than is customary either in England or the United States. Although the legislature, then, along with the principles of parliamentary government, is supreme in France, its supremacy applies to a more restricted field than in Anglo-American countries.

In England there has never been a clear and well-marked division of powers such as was suggested by Montesquieu. Since the development of parliamentary government and the assurance of legislative supremacy with the dominance of the House of Commons, legislation and execution have been combined to such an extent that no strict separation between these functions is practiced in the English government. The courts, although in final analysis subordinated to the functions of making and applying the law, have in England, under what is known as the rule of law, a semi-independent status. They are privileged unless specifically denied this power by acts of Parliament, to restrict, limit and under certain circumstances to set aside the acts of executive officers. Thus, although the courts are not privileged to declare legislative acts invalid, they may, by the process of interpretation, have a controlling effect on the application of various branches of law in England. This exception does not seriously affect the general principle that England is ruled under legislative supremacy with the combination of legislative and executive power vested in the cabinet and prime minister. The English system of government is a government by a few—an executive committee—under an arrangement of direct responsibility with the lines of control generally visible and open to the constant pressure of public opinion.

The theory of the separation of powers which was evolved in the United States assumes three well-defined and more or less independent organs of government. Each of these organs is regarded as within its sphere to be beyond the control of the other organs. Each is as-

sumed to have certain discretionary rights, privileges and prerogatives. Since the powers and duties of the legislature and executive are usually more clearly defined, and since it is the duty of the courts, as developed in American practice, to define the limits of these authorities, the judiciary becomes the guardian of the liberties and privileges of the citizens when the executive or legislature exceeds the powers outlined in the fundamental law. The American principle of the separation of powers has prevented the combination of the legislative and executive departments which is characteristic of most European governments.

A marked difference between the American and the English-French systems arises from the fact that under cabinet government the prime minister and the other members of his cabinet may be members of the legislature; whether members or not they have the privilege of participating in the activities of the legislative body. In fact the ministers are expected to prepare legislation affecting their departments, to present the measures to the legislative body, and to defend them when under consideration. The peculiar theory adopted in the United States has prevented this arrangement, with the result that with the exception of the reading of the annual message to Congress by the President, the President and his cabinet officers cannot visit and participate in the proceedings of Congress and can only deal with the legislative body in an indirect way by appearing before committees, by sending communications or by trying to influence Congress through the press or by patronage and other roundabout methods. A similar practice prevails in the state governments. In the American system the lack of unity in action and execution renders the process of government invisible and makes the lines of responsibility indirect and covert.

It is worthy of note that the familiar independent-unit close-compartment plan of separation was not incorporated in early state constitutions, where the legis-

lature was given a dominant position with the executive and the courts subordinate. Neither was the theory followed in the general plan of the national government which intermingles the powers at many points. The failure to incorporate a definite theory of separation in the Constitution left the way open, President Washington thought, to consult the Senate freely as an executive council. The President also felt at liberty to secure the advice of the judges in advance of the formulation of government policies. Rebuffed in both efforts owing to a curious notion of privileges and prerogatives of legislators and judges, Washington was obliged to accept a view of separation of powers quite different from what he conceived the Constitution to establish. Similarly the first state constitutions neither made definite provision for an independent judiciary nor included any obstacles to free consultation of executive officials with legislative departments. It was not then the laws and constitutions of the eighteenth century which formally established a tripartite system which renders cooperation extremely difficult, but the peculiar concepts of independence held particularly by those in legislative and judicial positions. This observation has a pertinent relation to the proposals for reform to which reference will be made later. For the purposes of this discussion the English and French theories may appropriately be considered together since both involve the essential features of cabinet government as contrasted with the presidential system of the United States.

The English-French system of cabinet government with the unity of governmental powers has been adopted extensively in Europe and elsewhere. It is now in operation in the self-governing colonies of Canada, Australia, and South Africa, and in Belgium, Italy, France, Netherlands, Spain, Norway, Chili, and has been partially applied in Denmark and Sweden. It has recently been incorporated in a modified form in the newer constitu-

tions of Europe, such as those of Germany, Czechoslovakia, Poland and Jugoslavia. The presidential system, as it prevails in the United States, was accepted by countries like Japan and Germany before the war, and is commonly applied in Latin-American countries. Executives in these countries are given greater authority than is allotted in the countries with cabinet government. So far as information is available, with the exception of Chili and, to a limited extent, Peru, the Latin-American countries give the president as executive an independent position. In Venezuela, for example, where the constitution obviously attempts to establish parliamentary responsibility, this provision has in practice been ignored.

Intermediate between cabinet and presidential government is the Swiss system, which places the executive authority in an executive board selected by the federal assembly and required to work through and with the assembly but selected for a given term and not subject to removal by a vote of lack of confidence. Members of the federal council are usually members of one of the chambers and the relations between the councillors and the legislature are very intimate. As in other European countries the councillors as ministers take the initiative in preparing measures for consideration by the houses. The plan of the Uruguayan constitution also creates an independent and responsible president with powers similar to those of an American President, particularly in relation to foreign affairs, police, etc., but it establishes a National Council of Administration composed of nine elected members who have control over branches of the administration not granted to the president, such as public instruction, public work, labor, industries and agriculture, charity and sanitation. The council prepares the budget, supervises elections and renders an account of all its activities to the legislative assembly. Councillors and members of the ministry may participate in the sessions of the assembly but may not

vote. Ministers are held responsible for their own acts. The president and ministry are given the right to present bills to the chamber or to offer amendments to bills under consideration.

The new Peruvian constitution likewise sets up an independent executive on the American plan but requires that the acts of the president be signed by a minister to give them effect. With the approval of the president ministers may present to Congress proposals for laws which they deem desirable. They may take part in the debates but may not vote. In a certain measure ministers are jointly responsible for general acts and individually for the acts connected with their departments. Ministers may be forced to resign by vote of lack of confidence in either house of Congress.

The question of the separation of governmental powers and their distribution among the various branches of government remains, then, as one of the foremost issues of modern politics. A number of countries are in the process of adopting some form of cabinet government, whereas others are inclined in part, at least, to introduce certain features of the American presidential system. Each system appears to have certain advantages which appeal to the proponents of the other system. It will be well, therefore, to consider some of the issues which have arisen in connection with the distribution of powers and to discuss briefly their effect on the organization and administration of modern governments.

Among these issues are the growth of executive powers and discretion, the decline of legislative authority in relation to the making and adoption of the budget, the necessity of government by permanent, professional officers with the consequent effect upon the making and execution of the laws, and the distrust and dissatisfaction with present legislative bodies. A brief consideration of each of these will render somewhat more spe-

cific a consideration of the present situation in relation to ministerial responsibility and the separation of governmental powers.

One of the striking facts with regard to the development of modern governments is the extent to which executive powers have been increased, and executive discretion in the administering of law has been enlarged. This process has been carried to its greatest extreme, of course, in connection with the war powers, under which government by law and by rule became in large part government by the wish and discretion of administrative officers and military leaders. But it is not only in time of war that this tendency has become apparent, for the modern tendency to place authority in the hands of the heads of departments with power to issue rules and ordinances, and to create various boards and commissions chiefly executive in character, but with powers that are legislative, executive and judicial in scope, all tend to emphasize this fact, namely, that modern governments are going in the direction of greatly enlarged executive powers.

A keen observer of the tendencies in modern governments has recently pointed out that so far as the American governments are concerned, we have passed through three periods: first, one in which there was a tendency to place great responsibility and authority in the hands of legislative bodies; second, when the legislative bodies declined in power and esteem and many limitations were placed upon the exercise of powers, the judiciary, as the protector of constitutions and the guardian of these limitations, was given extraordinary powers and duties; third, when legislative supremacy and judicial supremacy have declined and instead we find ourselves in the process of elevating to an extraordinary place the executive departments of the government. No doubt the process of shifting from one department to another will vary according to the peculiar

times and conditions through which a nation passes, yet the fact remains that the theory of the separation of powers in its former sense of real separation and independence appears to be applicable only to a primitive and undeveloped society. The modern complex and greatly expanded functions of government require an enormous extension of the executive functions and a consequent limitation by comparison of the functions of the other two departments.

The passing upon the budget which involves the voting of taxes, and the appropriation of public money was once regarded as the very essence of the power of legislative assemblies and the fundamental basis of representative government. To Edmund Burke, liberty from a governmental standpoint inhered in a large part in the control of the purse strings. But the situation has changed, and the observation of Burke appears no longer to be applicable. The voting of appropriations and the levying of taxes by legislative bodies alone have resulted in what is commonly known as "pork barrel" methods, log rolling, and governmental extravagance on a scale heretofore unknown. The recognition of this weakness in legislative-made budgets has in many countries resulted in the turning over of this function to the executive and the placing of the responsibility for the making of the budget upon the ministry: the chief function of the legislature becomes the turning of the light of publicity upon the ministerial conduct. And even the function of publicity is being taken over by the press and other agencies. This practice has been carried to its farthest extent in England, where the cabinet makes the budget and where the House of Commons has in practice given up its function of making any changes in the budget as prepared by the ministry. The tendency has been to weaken the authority of the legislature in this field and to strengthen the position of the executive wherever an attempt has been made to increase govern-

mental efficiency and to reduce the extravagance of legislative bodies in which individual members are dominated by private and local interests and log-rolling methods inevitably prevail.

The extraordinary enlargement of governmental functions and the increasing complexities of the problems involved in public administration have rendered it necessary to modify seriously many of the principles and practices applicable to primitive agricultural and undeveloped societies. The complexity of governmental operations and the many technical and intricate issues concerned, have made it indispensable to secure for the operation of government a large number of specialists or professional officers. The advice and assistance of such experts, it is thought, can be secured to the best advantage when the processes of legislation and administration are combined. In practically every other government except that of the United States, either the ministers or officers connected with the government have control of the preparation of bills and their presentation to the legislative bodies. Executive initiative in this process tends to place the matter under the control of professionals who develop standards and a technic of legislation with which the American legislative product compares quite unfavorably. In England and in France there has been developed a permanent and professional class of administrators who by training and experience are qualified to deal with the increasing complexities of administration. Though the methods of securing these permanent professional administrators differ, the general result upon the conduct of public affairs is quite similar. It has been found extremely difficult to secure and make use of permanent and professional officials under a system of strict separation of powers and the independent authority of the departments concerned.

The distrust and dissatisfaction with present legislative bodies is one of the noteworthy characteristics

of modern political thinking. Representative government, which was once looked to as the panacea for good government and as an indispensable requisite of the development of democracy, is now on trial. There is a profound dissatisfaction with the functions of representative bodies in countries like England and France which have the parliamentary or cabinet systems, and there is the same and perhaps more serious dissatisfaction with legislative bodies in presidential countries such as the United States. It is claimed that our representative bodies are not really representative; that certain classes only, chiefly the classes of money and property and professional interests, are represented in legislative bodies, and that the great mass of workers and other large classes are not. This objection to representative bodies is leading to a movement to create assemblies based upon industries and professions which would be given authority to deal with many of the questions relative to work, hours of labor, sanitary conditions, prices, wages and matters of this kind which are not dealt with satisfactorily by the present politically representative bodies. There seems also to be a general agreement that representative bodies are either inefficient, wasteful or corrupt, and in some instances the charge is made that all three of these weaknesses are apparent in our present legislative bodies.

These problems have brought about a reexamination of the general organization and functions of government whether presidential or cabinet in form. Numerous reports and investigations have been made, such as the Haldane Report in Great Britain, and reports by committees on the reorganization of administration in the United States, in which the present organization of the cabinet and administrative functions and duties are criticized with suggestions for reform. A few conclusions seem to follow from the reexamination which is under way. First, it is taken for granted that whether

the government be parliamentary or presidential, there will necessarily be a government by a few, either by a president and a cabinet or by a prime minister and a cabinet. It is also conceded that an elective body can serve effectively only as a board of advisers and critics, and that for this purpose the large assemblies which we now have are cumbersome and unwieldy; that a relatively small body elected for long terms on some plan of proportional representation to which would be selected those who are familiar with local conditions as well as with some of the essential principles and practices of government administration seems a requirement, if government is to keep pace with the growth of its functions and the increasing complexity of the conditions with which it must deal. It is also realized that governments are acquiring new and more complex functions and that a large part of the time of those connected with the government must now be given to the collection of information, in the form of investigation and research, in order that legislative and administrative officers may deal intelligently with the very difficult problems that arise.

To meet this situation, the Haldane Report included among the suggested executive departments one on research and information. Perhaps an even better arrangement would be to have research divisions and bureaus connected with all the departments and in proportion to the need of technical assistance and information. In the light of these principles the American theory of the separation of powers appears largely as a device for a policy of inaction—an excellent plan to encourage politicians to escape responsibility and to permit private individuals and corporate organizations to defy public powers with impunity. In the words of a caustic foreign critic, if the desire is to secure an effective check on radical and progressive movements, if the intention is to place corporate organizations in an impregnable posi-

tion so far as government regulation is concerned, the American theory of the separation of powers is undoubtedly a well-conceived device for this purpose. From the standpoint of responsible and efficient government, the separation of powers stands as an obstacle which must be removed if the government of the United States is to make progress along governmental lines and is to be prepared to meet conditions both domestic and foreign.

A large part of this difficulty could be overcome if the President and his cabinet were made directly responsible for the formulation of legislation as respects the administration, and the cabinet members were free at any time to appear and debate in the houses. It seems necessary, therefore, that an extreme and indefensible separation of powers in the United States, which was largely the result of interpretation, be abandoned in order to make our government more responsible and more efficient. This could be done by a mere general agreement, just as the existing theory is largely based upon the peculiar conception of officers, who were responsible originally for the interpretation and application of our constitutions. Modifications could be made through the simple process of interpretation by which they were engrafted upon early American institutions. The almost universal tendency of European nations to unite to a considerable degree the legislative and executive functions should lead us ultimately to the conclusion that our present system, a disjointed and indirect system of legislative and executive relations, should be revised.

While defects in our present system of separation of powers and lack of ministerial responsibility are apparent, it is significant that we have in our government certain advantages, such as the ready and easy concentration of power in time of war, which the leaders of thought in foreign governments would like to adopt.

And the American government need not abandon the essential principles of its separation of powers. Rather should it modify its practices and procedure so as to secure ready and open access of the President and his cabinet members to the houses of Congress, and a more definite correlation of legislation and administration. This can be done without breaking down the essential features of our existing governmental order, which despite its many defects has worked fairly well. It is evident from a comparison of the cabinet and presidential governments, that cabinet government can be improved by the application of principles now made a definite part of the presidential system, and that presidential government can be improved by taking advantage of the well-known practices which have proved so successful in the countries with a cabinet government. Each has advantages which deserve continuance and development. The combination of the features of both plans is apparent in a number of recent constitutions.

Certain tendencies are particularly notable in recent constitutions. Three are marked enough to merit listing: (1) To create a semi-independent executive, but to require ministers to assume responsibility for all important political acts of the president either individually or collectively before the legislative chambers. (2) To give the ministers free access to the legislature to take part in debates, to present measures and, if members of the legislature, to vote. (3) To place upon ministers the duty of preparing the budget, and the responsibility of formulating laws and presenting them to the legislative bodies.

With a few exceptions the tendencies are distinctly in the direction of the adoption of the essential features of cabinet government with such modifications as will leave place for a president and premier each with certain distinct and independent functions. Which of the two, president or premier, will exercise the greater

powers will depend to a considerable degree upon the political conditions of the country, the personality of those holding the offices and the particular influences at work favorable either to cabinet or presidential machinery.

But mere palliatives such as the making of the budget by the President and his cabinet, and the combination of executive and legislative powers largely in the same hands, though they may improve the working of existing governmental machinery will only tend to call attention anew to certain obvious facts, namely, that modern representative assemblies are failing in the performance of some of their most important functions, that the present bodies must be radically changed or give way to other forms of political organization, and that the contest to secure and retain representative and responsible governments will require as in past generations constant vigilance and increased interest on the part of political thinkers.

It seems necessary for the consideration of the problems of representative government and ministerial responsibility to bring under criticism certain well-known political ideas and traditions. With regard to the organization of government just as in the field of law, mere tinkering with political forms and organizations will not meet the requirements necessary to adapt political institutions to modern conditions and tendencies. The leaders in political science will of necessity be required to devote more effort to the preparation of programs of reform and reconstruction involving entirely new procedure and practices and to the campaign for acceptance of these reforms as parts of the governing processes. Such reforms, as is the case with the plans for reorganization of courts fostered by various bar associations, will be adopted slowly. But the need in the field of political science with respect to radical reconstruction, both from the standpoint of legislation and administration, is equally as necessary as constructive

reforms in the field of law. Half-way or temporary measures, such as the commission form of government in cities or the plan of administrative consolidation of bureaus, commissions and other administrative agencies in state governments, though they may be serviceable in the direction of more effective administration, do not remove the fundamental defects in modern government. Nothing short of a new type of legislative body and a very much changed form of executive and administrative organization, with a well worked out plan of correlation between the two departments, will render modern governments competent to meet the exigencies of present political, social, and economic life.

COMPARISON BETWEEN CABINET GOVERNMENT AND PRESIDENTIAL GOVERNMENT¹

(A) WHAT IS THE ESSENTIAL DIFFERENCE BETWEEN CABINET GOVERNMENT AND PRESIDENTIAL GOVERNMENT

AS TO CABINET GOVERNMENT

By the cabinet, writes Bagehot:

We mean a committee of the legislative body [i.e. Parliament] selected to be the executive body. The legislature has many committees, but this is its greatest. It chooses for this, its main committee, the men in whom it has most confidence. It does not, it is true, choose them directly; but it is nearly omnipotent in choosing them indirectly.

This cabinet, including the prime minister himself, who is the head thereof, is in theory chosen by the King, but it is in fact selected by the prime minister from among the leading members of the party of which the prime minister is the head. The members of the cabinet are of course technically the King's servants. The reigning monarch had, according to Bagehot, as indeed he still has, though now more rarely than fifty years ago,

¹ From article by A. V. Dicey. *Nineteenth Century*. 85: 25-42. January, 1919.

the power of actually deciding who shall be invited to be the prime minister among the leaders of the party which commands a majority in the House of Commons. The prime minister again has to choose his associates, but he only chooses from among a charmed circle. The cabinet is made up, or at any rate was made up in Bagehot's time, of the parliamentary heads of the chief departments through which the executive government of the country is carried on. . . Cabinet government, as it was developed after the revolution of 1688, had come to mean not the separation but the fusion of at any rate the executive and the legislative authority of the state. A second leading characteristic of cabinet government in England is the power generally possessed by a cabinet to dissolve the Parliament by which it has been created or supported. This cannot be better described than in Bagehot's own words. He writes:

[The cabinet] is a committee which can dissolve the assembly which appointed it; it is a committee with a suspensive veto—a committee with a power of appeal. Though appointed by one Parliament, it can appeal if it chooses to the next. . . But neglecting . . . small and dubious exceptions, the cabinet which was chosen by one House of Commons has an appeal to the next House of Commons. The chief committee of the legislature has the power of dissolving the predominant part of that legislature—that which at a crisis is the supreme legislature. The English system, therefore, is not an absorption of the executive power by the legislative power, it is a fusion of the two. Either the cabinet legislates and acts, or else it can dissolve. It is a creature, but it has the power of destroying its creators. It is an executive which can annihilate the legislature, as well as an executive which is the nominee of the legislature. It *was* made, but it *can* unmake; it was derivative in its origin, but it is destructive in its action.

If we fully master these two leading characteristics of the English cabinet, viz. that it links or fuses together the English executive and the English legislature, and next that it can in general dissolve the legislature, we shall be able to carry our author's main doctrine with regard to cabinet government somewhat further than he does himself. It really links together the main politi-

cal parts of the whole English constitution. Take, for instance, a distinction framed by Bagehot himself between the ornamental part of the constitution, mainly represented by the crown, and the efficient part of the constitution, mainly represented by the cabinet. These are curiously linked together in a way which is not at first perceived. The existence of the cabinet protects the King from responsibility for his acts, and on the other hand the vagueness of the King's powers, most of which are exercised through the cabinet, increases the moral and even the legal authority of the cabinet. So again the power of the cabinet to exercise the King's right to dissolve Parliament really ensures the permanent harmony between the cabinet or executive power, and the electorate. It links again the electorate and Parliament, or in popular language the legislature and the people.

AS TO PRESIDENTIAL GOVERNMENT

The President for the time being constitutes the executive of the United States: the founders of the United States felt strongly the necessity for having a vigorous executive.

They therefore made an enlarged copy of the state governor, or, to put the same thing differently, a reduced and improved copy of the English King. He is George the Third shorn of a part of his prerogative by the intervention of the Senate in treaties and appointments, of another part by the restriction of his action to federal affairs, while his dignity as well as his influence are diminished by his holding office for four years instead of for life. His salary is too small to permit him either to maintain a court or to corrupt the legislature; nor can he seduce the virtue of the citizens by the gift of titles of nobility, for such titles are altogether forbidden. Subject to these precautions, he was meant by the constitution-framers to resemble the state governor and the British King, not only in being the head of the executive, but in standing apart from and above political parties. He was to represent the nation as a whole, as the governor represented the state commonwealth. The independence of his position, with nothing to gain or to fear from Congress, would, it was hoped, set him free to think only of the welfare of the people.

This description of the president's office given by Bryce reveals at least half the secret of the real difference between presidential government and cabinet government. The government of the President in the United States means the real administration of affairs by an executive officer who may, when occasion requires, exert considerable power, but is an official whose authority is under the Constitution definitely restricted so that he may not misuse it as, in the eyes of American constitutionalists, George the Third misused the power of an English King.

The other half of the same secret is the immense influence exerted by Montesquieu's *L'Esprit des Loix* in 1787 on the members of a convention who created the Constitution of the United States. It was to them a bible of political philosophy, and no doctrine to be found therein met with more complete acceptance than the dogma that the separation of the three powers—namely, the executive, the legislative, and the judicial power—formed the distinguishing characteristic of a free government. Hence the attempt, to a great extent made with success under the Constitution of the United States, to mark out for the President (the executive), for Congress (the legislature), and for the Supreme Court (the judicature) of the American commonwealth separate and independent powers. Add to these considerations that the very scheme of a federal government requires separation between the authority of the federal, or national, government, and the authority of each of the different states which make up the federation. This moreover was a practical necessity, for none of the thirteen Colonies which had acquired independence of England would have assented to any federal Constitution which had not left to each of them very considerable power of self-government. From the very nature of things however this separation of powers could not be rendered absolutely complete. The President, for example, ought strictly to have no legislative power, and

on the other hand he ought, in the legitimate use of his executive power, to be absolutely uncontrolled by the Houses of Congress. Yet the Constitution bestows upon the President not only a suspensive but in effect an absolute veto on bills passed by both Houses of Congress, provided only that the president's veto is in either House of Congress supported by more than one-third of that House. Hence too, though no resolution of either House of Congress can in strictness interfere with the exercise by the President of authority given to him by the Constitution, the Houses of Congress, and especially the Senate, have in certain respects in practice encroached upon the presidential powers. But, if the matter be looked upon from a general point of view, presidential government as it exists in America, and cabinet government as it exists in England, are two forms of executive government each whereof may be directly contrasted with the other.

This contrast may be thus stated. The President is the real American executive, but his executive powers are limited by his being elected only for four years, by his being through unbroken custom not re-eligible for more than once; by the vast amount of power left to each of the states of the union; by his having no right to dissolve Congress; by his having no legislative authority whatever, except that of vetoing any bill when his objection thereto is supported by a minority of over one-third of either House of Congress. Cabinet government, on the other hand, means at bottom, and as practised in England, the fusion of the executive and of the legislative authority, and the power of the cabinet in many circumstances to dissolve the Parliament which has created or supported it. A cabinet, in short, supported by the House of Commons which can also count upon the support of the electorate, has as much authority as can well fall to any government. It is however a kind of government which can never be secure of its existence unless it continues to have the support

of the House of Commons, and this in modern circumstances cannot long be relied upon by any cabinet which has definitely lost the support of the electors.

(B) WHAT ARE THE RESPECTIVE MERITS AND DEMERITS OF CABINET AND OF PRESIDENTIAL GOVERNMENT?

To find an answer to this question it will be convenient and instructive to test the virtues and the defects of each kind of government, first in times of peace, and next in times of war.

AS TO CABINET GOVERNMENT

(1) *In time of peace*—The merits of this kind of government, assuredly, in England at least, become most visible in times of peace. It is worth while to sum up the grounds on which Bagehot held, for the most part quite truly, that cabinet government was, at any rate during a peaceful era, of immense benefit to England.

First. A cabinet government ensures the presence in the cabinet of men of ability. This is so partly because the prime minister is almost of necessity one of the few leading men in Parliament; and such leadership can rarely be obtained except by ability of some kind above the ordinary level, and by ability which is known to the House of Parliament. The prime minister again is, from the desire to carry on his government with success, almost compelled to choose colleagues of parliamentary capacity, and who will be approved of by the prime minister's supporters in Parliament. The Houses of Parliament moreover are better electing bodies than would be the electors, and it may be added, indirect election through the prime minister is more likely to produce the choice of able men than would the direct choice of members of the cabinet by Parliament. The system of direct election is apt often to favour the choice not of the men most desired by any electoral body, but of the men who give least offence to the majority of the persons who elect them.

Second. Cabinet government educates the nation. The debates in Parliament are full of interest; they not only deal with important matters but they also determine what is far more interesting to the mass of electors, whether a party to which a man belongs shall or shall not retain or lose office, and, what is most interesting of all, decide the personal question whether the leader an elector follows, say Mr. Asquith or Mr. Lloyd George, shall take or retain office. And to listen (even through newspapers) to parliamentary discussion and debate is, or was when Bagehot wrote, a valuable education for the nation.

Third. Cabinet government possesses a special kind of flexibility which at times may be of extreme advantage to England. This quality is shown in various different ways: It is displayed, for example, by the power of Parliament suddenly to remove from office a premier of ability and highly respected and to put in his place another leader who possesses, or is supposed to possess, special qualities, e.g. superabundance of vigour and even of combativeness, which fit him to meet some crisis, e.g. the conduct of a war, and were not very prominent in the character of the premier whom he succeeds. Bagehot certainly was very much impressed by the effect in the conduct of the Crimean War of substituting a cabinet in which Palmerston was premier for a cabinet of which Lord Aberdeen was the head. He quotes, in obvious reference to this change, a saying of the time that "We turned out the Quaker, and put in the pugilist." This flexibility of cabinet government has shown itself again during the present war, and in a different form. The cabinet, from its blending together executive and legislative powers, is capable, without anything like a revolution, or at any rate without any proceeding which the mass of Englishmen feel revolutionary, of extending the authority and changing the form of the executive itself. The Defence of the Realm Acts have bestowed upon the government of England powers such as

no English executive has ever before possessed; they might be called despotic, were it not that Englishmen living in England have felt that they themselves were not really subject to a tyranny. The creation again during the war of first the War Committee, and finally the War Cabinet, has in effect created something closely resembling a new kind of executive for the government of England.

Here however it should be noted that Bagehot's high estimate of cabinet government cannot be appreciated at its full worth by any critic who does not bear in mind more than one important consideration. There is latent, in the first place, in Bagehot's whole speculations on the English constitution the assumption that good government, at any rate in what is called a free country, is promoted and secured by the maintenance in office of men of marked ability and high character, by the prevalence throughout the whole country of real debate and free discussion, and by the general recognition of the fact that legislation and, above all, the carrying out by legal means of great reforms, is one of the most difficult tasks which any man, or body of men, can undertake. At the present moment this faith in freedom of discussion, and in laborious forethought as the necessary means for obtaining good legislation, has gone out of fashion. Every politician, whatever his party, is ready to pledge himself to obtain at a moment's notice, for every man or woman who is an elector, any blessing which he or she may desire, whether it be a permanent living wage for every wage-earner throughout the kingdom or the rapid creation of a federated British Empire which shall grant Home Rule to every part of the empire, and yet retain all the concentrated power of the Imperial Parliament which has brought England and the Dominions triumphantly through the most terrible war of which Englishmen have ever had experience. Of these hopes or dreams Bagehot knew nothing. He believed above all things

in freedom of discussion and in statesmanship grounded on thought and wisdom. And it was because of this belief that he trusted in English cabinet government as the best means of ensuring to a free people the rule of men of intelligence and character who themselves trusted in political progress guided by thoughtfulness. Even persons, in the second place, who sympathise with Bagehot's political principles of action, must admit that since he wrote his *English Constitution* many changes have taken place which have seriously invalidated some part of his claim for the superiority of cabinet government even in times of peace.

The main changes which affect his arguments in favour of cabinet government as it existed in England may be brought under two heads: Since 1866 England has become more and more of a democracy. A certain kind of unchangeableness in form, and even in feeling, which is characteristic of English constitutionalism, still conceals an immense revolution which has been effected, or rather which has grown up, without the use of violence, and with very little breach of law. George the Fifth is, and most deservedly is, more popular than any King who has preceded him. Of anti-monarchical feeling there is little or no sign in England, but the constitution has become democratic. I purposely use popular language because it is most intelligible and establishes the point I wish to press home. The first Reform Act gave predominant power, it was said, to the 10*l.* householders, and they, as Bagehot has pointed out, were or represented the middle class who were much inclined to pay deference to the great landowners and the men of wealth who were certainly richer, and many of them far more versed in politics and in public life than the average 10*l.* householder. The Reform Act of 1867 transferred power from the middle class to all householders, including in that number a good many lodgers. There was thus created an electoral constituency for the

United Kingdom of about six million, three hundred thousand men. What may be our present parliamentary constitution, and what may be the exact number of the electorate under the Representation of the People Act 1918, no one can venture confidently to assert. The act changes our whole electoral system from top to bottom. It creates an electoral body which it is said will exceed seventeen million of electors, among whom are contained for the first time women who, it is also said, will number six million of the whole electoral body. Another change at least equally important is one of opinion. From 1832 till toward the end of the nineteenth century the men who guided the legislative action of England did in general, subject of course to some considerable exceptions, deprecate the action of the state in matters which most persons, as it was then imagined, could best discharge for themselves. We all adhered, or professed to adhere, to the principle of *laissez-faire*. This state of feeling has in public life at any rate become a matter of the past. One illustration of this change of opinion will establish my point. Persons whose political memory reaches back to fifty years ago were taught the folly of any state which attempts to fix by law the rate of wages. During 1918 our Parliament has fixed by law the rate of wages for class after class.

These two changes—the one in the constitution of our electoral body, the other in national opinion with regard to the proper sphere of state intervention—explain or emphasize qualifications which now must be introduced into Bagehot's picture of cabinet government. The prime minister himself is no longer elected wholly by Parliament. A statesman known to the country is often now in practice designated as worthy to be appointed, or to be retained, as prime minister not by the voice of the House of Commons, but by the voice of the electors expressed at a general election. The general election will have decided before this article appears in

print whether Lloyd George shall remain or Asquith become prime minister. A prime minister too is now elected more or less for a fixed period, namely the time which will expire with the dissolution of a particular Parliament, and which cannot legally exceed five years. And he in turn may appoint his colleagues much less with a view to gaining the approval of the House of Commons than to satisfying the claims of different parties throughout the United Kingdom to be duly represented in his cabinet. The party system lastly has become within the last thirty years a great deal more organised. The old two-party system has all but vanished. We have still a party of ministerialists who support the government and an opposition who attack it. But during the Parliament just dissolved there were represented in the House of Commons at least four different parties, and in the next Parliament the number of them may probably be increased. In any case Bagehot's picture of cabinet government which represented truly enough its general character in 1865-66 needs a good deal of modification before it can be treated as a completely accurate account of cabinet government in 1918. A censor might say that the cabinets of today had approached more nearly than fifty years ago to presidential government without obtaining the merits which can be ascribed to that form of government.

(2) *In time of war*—Whilst the virtues of cabinet government are obvious during a peaceful period, such as was for the most part the reign of Queen Victoria, its defects become more obvious in a time either of foreign or of civil war. They may, for our present purpose, be thus summed up:

First. Cabinet government is government by a council, and from that very circumstance is likely to be deficient in the energy, promptness, and decisiveness which may mark the action of a wise ruler of men who, whether

he be a despot or an American president, is at any rate entrusted even for a time with power, that is to say, can if he chooses carry out the policy which he himself thinks advisable and likely to benefit the country of which he is more or less the ruler. Councils of war are, just because they are councils, proverbially discredited. One man of real ability as a general is proverbially more likely to act with vigour than a council of five or six generals.

Second. Cabinet government as it exists in England has another defect of a more subtle character which has not received quite the attention which it deserves. In England the members of a cabinet, from the premier downwards, are party leaders. They have risen to power by partisanship; they are maintained in power by partisans, and they know the defeat of their party, or anything which leads to the break up of their party, means to the cabinet loss of office, to each of themselves loss of reputation, and also know—what to men of the very highest character tells for more than any other consideration—that loss of office means in general the failure to carry out the policy which they really believe to meet the wants of the country. The weakest part of cabinet government is that it is based on partisanship, and it is all but impossible to transmute partisanship into patriotism. This assertion does not mean that public men are not public-spirited, but it does mean that the whole English parliamentary system, and the cabinet government which is its outcome, makes it extremely difficult even for the best of citizens to avoid thinking and feeling as partisans.

Third. Then again the quality of freedom of discussion which Bagehot rightly prizes so highly has its weak side. You may have, both in Parliament and in the cabinet which represents the Parliament, discussion which wastes time and may lead to no result, or even to disaster,

That these defects and others like them should be of more consequence in time of warfare than in time of peace will be easily conceded.

AS TO PRESIDENTIAL GOVERNMENT

(1) *In time of peace*—Presidential government does not appear at all at its best in such a period.

In quiet times the power of the president is not great. He is hampered at every turn by the necessity of humouring his party. He is so much engrossed by the trivial and mechanical parts of his work as to have little leisure for framing large schemes of policy, while in carrying them out he needs the co-operation of Congress, which may be jealous, or indifferent, or hostile. He has less influence on legislation, that is to say, his individual volition makes less difference to the course legislation takes, than the speaker of the House of Representatives. In troublous times it is otherwise.

After all, too, a president need not be a man of brilliant intellectual gifts. His main duties are to be prompt and firm in securing the due execution of the laws and maintaining the public peace, careful and upright in the voice of the executive officials of the country. Eloquence, whose value is apt to be overrated in all free countries, imagination, profundity of thought or extent of knowledge, are all in so far a gain to him that they make him "a bigger man," and help him to gain over the nation an influence which, if he be a true patriot, he may use for its good. But they are not necessary for the due discharge in ordinary times of the duties of his post. Four-fifths of his work is the same in kind as that which devolves on the chairman of a commercial company or the manager of a railway, the work of choosing good subordinates, seeing that they attend to their business, and taking a sound practical view of such administrative questions as require his decision. Firmness, common sense, and most of all, honesty, an honesty above all suspicion of personal interest, are the qualities which the country chiefly needs in its chief magistrate.

The utter insignificance of many presidents is explained by Bryce's language. It does not at all wholly depend upon the character of the men themselves. The United States have not had till recently much to do with foreign policy. They were, except during the war of secession, not much exposed to violent disturbance, and one must add that in ordinary times each state would be able to provide for the maintenance of order. Any

extraordinary statesmanlike talent which a president possessed he might therefore have little opportunity of displaying, and on the other hand the fact that the possession of remarkable talents was not always required in a president at one time encouraged party managers and party conventions to put forward as candidates for the presidency men who, though by no means the most eminent of American politicians, might happen to have a fairer chance of election than some distinguished party leader.

(2) *In time of war*—According to Bagehot presidential government, both in time of peace and in time of war, between which he does not very accurately distinguish, possesses none of the special merits of cabinet government, but in fairness to Bagehot it must be noted that he uses the defects of presidential government as in America mainly with a view to bring into relief the full virtue of cabinet government. However this be, Bagehot hardly realises that during a time of civil or of foreign war a President may, and generally will, if supported by the nation, possess a concentration of power equal to, and even exceeding, that of an English cabinet. Note on this point the language of Bryce:

The difficulty in forming a just estimate of the President's power arises from the fact that it differs so much under ordinary and under extraordinary circumstances. This is a result which republics might seem specially concerned to prevent, and yet it is specially frequent under republics, as witness the cases of ancient Rome and of the Italian cities in the Middle Ages. In ordinary times the President may be compared to the senior or managing clerk in a large business establishment, whose chief function is to select his subordinates, the policy of the concern being in the hands of the board of directors. But when foreign affairs become critical, or when disorders within the union require his intervention—when, for instance, it rests with him to put down an insurrection or to decide which of two rival state governments he will recognise and support by arms—everything may depend on his judgment, his courage, and his hearty loyalty to the principles of the Constitution.

Hence the strong features of presidential government in the time of war.

First. The authority of the President if supported by the nation may become, and probably will become, almost despotic.

The domestic authority of the President is in time of peace small, because by far the larger part of law and administration belongs to the state governments, and because federal administration is regulated by statutes which leave little discretion to the executive. In war time, however, and especially in a civil war, it expands with portentous speed. Both as commander-in-chief of the army and navy, and as charged with the "faithful execution of the laws," the President is likely to be led to assume all the powers which the emergency requires. How much he can legally do without the aid of statutes is disputed, for the acts of President Lincoln, during the early part of the war of secession, including his proclamation suspending the writ of *Habeas Corpus*, were subsequently legalised by Congress; but it is at least clear that Congress can make him, as it did make Lincoln, almost a dictator. And how much the war power may include appears in this, that by virtue of it and without any previous legislative sanction President Lincoln issued his Emancipation Proclamations of 1862 and 1863, declaring all slaves in the insurgent states to be thenceforth free, although these states were deemed to be in point of law still members of the union.

The language of Bryce on the President's power should be carefully studied. It brings into view a most important fact in the constitutional history of the United States. Americans have succeeded in creating at a time of national peril a dictatorship, but a dictatorship which has involved no real peril to the liberties of the country. Nor is it necessary for the attainment of this end to wait for the existence of civil war. It is perfectly clear that President Wilson has possessed since the beginning of the war with Germany a firmer and greater authority than has fallen at any time to any English prime minister. One may put the matter a little more strongly. President Wilson, though he could not technically declare war himself, could certainly, as we know by experience, determine whether war should or should not be declared, and fix, according to his own judgment, the date at which the United States should become the avowed enemy of the German Empire. Note too that Lincoln's authority was, and Wilson's authority is, simple, real, personal power, i.e. the decision of national affairs in

accordance with his own will and judgment. At the moment when it was doubtful whether Lincoln would issue an Emancipation Proclamation, or whether Wilson would join England and her Allies in the war against German despotism, the President could not practically have been compelled by any party, or even by the House of Congress, to take a step which he might think either premature or in itself impolitic. It is for this reason that when it was doubtful whether Wilson would determine whether America should take part in the war, it was said by some English writer that Mr. Wilson was at that moment "the most powerful ruler in the world." It is for this reason that the glory of having taken a decisive step in the destruction of slavery will always remain the personal glory of Lincoln, whilst the deserved fame of America having joined decisively in the war against German despotism will always be ascribed to the statesmanship of Wilson.

Second. The independence of the President within the sphere of his powers though it may have some disadvantages, not only increases the dignity of his office but also, what is of far more consequence, limits to a considerable extent the evil of party government, especially in a time of war. No doubt the President is in the United States always elected by a party, though he may often owe a second tenure of office to the respect he has excited among men of all parties. But he continues when in office to a much less extent than does a prime minister to be the head of a party. A President when he has taken office is always recognised as being the representative of the nation. A prime minister however pure his patriotism, can hardly prevent, even when in office, his continuing to be, and still more his being held to be, the leader of a party. This difference of feeling may be ascribed to the fact that neither the House of Congress nor any party either in Congress or in the country can put an end to a President's authority

as long as he keeps within the rights given him by law, that is by the Constitution as construed by the law courts.

Third. The power and the independence of the President involve of course some possible evil to the nation, but they possess a virtue which has hardly obtained sufficient recognition. They increase with an official of any worth or merit his sense of responsibility. One cannot doubt for a moment that in the case of Lincoln increase of power went on constantly increasing his sense of responsibility and his intense determination to perform to the full his duty to the nation and to God. The admiration and the reverence entertained for him, as at once the hero and the martyr of democracy, has rather restrained the recognition of the way in which the possession of power and of responsibility raised his character and developed his sense of public duty from the time when he first took an active part in public affairs to the day of his death. The matter well deserves consideration, for the history of his presidency certainly suggests, what we may well believe, that, with men of any nobility and of statesmanlike foresight, security in the tenure of considerable power may also increase the sense of patriotism, and of the duty owing to a country by the chief and chosen representative of the nation.

(C) IS IT DESIRABLE TO INTRODUCE ANY CHARACTER-
ISTIC OF PRESIDENTIAL GOVERNMENT INTO THE
ENGLISH CONSTITUTION

No Englishman wishes to change our constitutional monarchy into a republic. The sole matter worth consideration is whether it might not be well, in time of warfare, to create a dictatorial power such as that which has fallen under the Constitution of the United States to Abraham Lincoln and to President Wilson? No man but a very rash writer and thinker would venture dogmatically to reply to the inquiry before us. My whole

object is to bring before my readers a few observations drawn from a comparison between cabinet government and presidential government, and suggested by the events of the war which has just, as we all hope, ended in a permanent peace.

Bagehot has made it perfectly clear that English cabinet government as it existed in his time had, in times of peace, immense advantages not possessed by presidential government in the United States. He possibly somewhat overrated the advantages to England, even in peaceful eras like his own, of the party government whereof the cabinet is the outcome. He certainly a little exaggerated the weak points of presidential government. Bagehot clearly did not realize, what Bryce has made as clear as day, that when the American commonwealth is disturbed either by foreign war or by civil war, the President becomes, or certainly may become, for all practical purposes a dictator. Lincoln, to use an expression of Bryce's, possessed greater power than any ruler of England since the time of Cromwell. President Wilson has exercised, and even now exercises, more independent power in the United States than does Lloyd George or than did Asquith in England. This is indisputable. Lincoln issued the Emancipation Proclamations at the time and in the terms which he chose. President Wilson at his own will, and no doubt in accordance with his own view of the course which it was expedient and right for the American commonwealth to pursue, determined that for two years or more the United States should not take part in the greatest war which has been waged in the history of the world, and then, when in his judgment the moment for action had arisen, brought the United States into the war, and took care that when once they jointed England and her Allies they should throw into the war the whole of their energy, wealth, and valour. No one will dispute that Lincoln may have made grave mistakes in carrying out a noble policy,

or that there may have been points in President Wilson's conduct during the war which opponents censured. But the existence of a presidential dictator has been admittedly in each case a benefit to the American commonwealth.

When England declared war on Germany, on the 4th of August 1914, cabinet government was inevitably put upon its trial. In declaring war the cabinet did an act of bravery which must always be laid to its credit, and exactly expressed the conviction of the nation. If therefore the war tested the system of cabinet government, that form of executive was put to the test under very favourable circumstances. The nation, speaking broadly, was for all practical purposes unanimous in demanding a declaration of war. There was no large party hostile to a war against Germany possessing anything like the power of the Whigs who from 1789 onwards opposed the very idea, and the carrying on of war between England and France. Let it be remembered that as a body the Whigs were as hostile to a war against Bonaparte as they had been to a war against the French Republic. One must in fairness add that the cabinets in power during the present war not only gained much from the absence of any powerful opposition to their war policy, but most legitimately gained a great deal more from the general sense that these ministries as a body, and with the exception of a very few of their members, completely shared the patriotic enthusiasm of the country in waging war with German despotism, and heartily desired that England should gain, as she has gained with the help of her Allies, a complete victory over foes who, though fanatics for German "culture," were the deadly enemies of true civilisation.

In spite of all these advantages, and in spite of a final triumph, the system of cabinet government did during the war, if I do not say break down, certainly exhibit its very weak side. Many and many were the

persons, during the stress of the war, and the knowledge of failures—say at the time when England could not save Belgium or even protect Antwerp from a ruthless foe, or when Serbia was invaded and conquered by our enemies, or when British armies were forced to retreat from Gallipoli—who said “O that we could have a dictator.” Then again the government itself felt that a concentration of power foreign to the system of cabinet government was a necessity for the country. The coalition of hitherto adverse parties, the creation first of a War Council, and then of a War Cabinet, were in the main efforts of patriotism. But the War Cabinet, to take a perfectly clear case, was really inconsistent with the form of government eulogised by Bagehot. Add to all this that the working of parliamentary government since the beginning of the war has exhibited the inherent defect of cabinet government, namely its constant dependence for office upon the will of Parliament, or rather of the House of Commons. Can anyone suppose that a good number of appointments which excited the blame of many of the public, and some things in the conduct of the war, as also the large size of the ministry outside the War Cabinet, were not due to the desire to conciliate, or not to offend, individuals or parties whose influence in Parliament might affect the existence of the cabinet? It is the independence of the president which more than once has raised a president from a partisan into a leader of the nation. It is the dependence of the cabinet on the will of the House of Commons, or even nowadays on the will of party organizations, which has sunk many a patriotic minister into the leader or the servant of a party. Add to this that, as already pointed out, cabinet government nowadays does not come up to the ideal attributed to it by Bagehot. The prime minister is now often not chosen by the House of Commons, but by the will of what is called the people, which may be in reality the will of well-organized factions. His cabinet may be

so put together as to ensure that each of discordant parties may have its own representative in the government. A thinker such as Bryce, who expresses himself with care, thinks party government a necessary evil, but still an evil that should be checked. But many leaders seem to long for the day when the concord between opposite parties more or less established by war shall again flourish and abound in peace time. A private man may venture to say that the nation has come to loathe party cries.

The presidential dictatorship of America has not damaged the freedom of America. Is it absolutely impossible that the ingenuity and the patriotism of England may discover some constitutional arrangement which would give, say, during a time of war, to some leader of the nation the independence and the patriotic supremacy which have made the name of Lincoln as famous and as revered as that of Washington?

INVESTIGATIVE FUNCTION OF CONGRESS*

In the winter and spring of 1923-24 a blizzard of congressional investigations swept the national capital. Party lines were tied up, statesmen were snowed under, and Washington officialdom was chilled by a storm of inquiries into the conduct of government departments. Scarcely a corner of the administration escaped inquisition. The subjects of inquiry ranged from the naval oil reserve leases at Teapot Dome and Elk Hill to the administration of the Veterans' Bureau under Director Forbes of dubious fame. Upwards of two-score inquests were instituted by Congress, through its committees, into the official behavior of the executive branch of the national government. In the end, and as a direct result, two cabinet members lost their portfolios.

* From article by George B. Galloway, Philadelphia Bureau of Municipal Research. *American Political Science Review*. 21: 47-70. February, 1927.

Such wide and effective use by Congress of its committees for the purpose of inquiry and examination of administrative conduct raised certain questions in the minds of students of government. What were the constitutional limits of the investigative function of Congress? What was the relation of this function to the law-making function and to impeachment? Was punishment by impeachment a satisfactory remedy for official misconduct, or had it become obsolete as too cumbersome? Did the vote of the Senate calling for Secretary Denby's resignation usher in a new process in this country? Should cabinet officials be required to appear on the floor of Congress and answer questions? Would this be preferable to investigating their actions long after they have been performed? Does the steady increase of federal powers necessitate greater supervision by Congress over the President and administrative officers? Have students of politics overlooked a function of Congress frequently and forcibly exercised for the control of administration?

A careful survey of the history of committee activity from 1789 to the expiration of the 68th Congress in 1925 discloses that there have been, all told, about two hundred and eighty-five investigations by the select and standing committees of the House and Senate. Only three Congresses have been barren of legislative inquests, while no administration has been immune. The high-water mark was reached during Grant's eight turbulent years, when incompetence and corruption ran riot through public life; between 1869 and 1877 Congress undertook thirty-seven different inquiries aimed at remedying bad conditions in the administration.

Much American history can be gleaned from the reports of these nearly three hundred investigating committees. For the Houses of Congress have employed the inquisitorial function over a wide range of governmental activity. Beginning with the inquiry into the defeat of

General St. Clair by the Indians in 1792, and continuing down to the current investigation of the Tariff Commission, this device has been put to many uses. The record shows that the War Department has come most frequently under the inquiring eye. Congressional committees have scrutinized the conduct of all the wars in which the United States has engaged except the Spanish-American War, when President McKinley forestalled legislative inquiry by appointing the Dodge Commission. They were responsible for the impeachment of President Johnson and Secretary of War Belknap. They have examined the conduct of the Treasury Department fifty-four times and of the Interior Department forty-one times, with attention centered most frequently on the Indian Bureau and the Pension and Patent Offices. The Government Printing Office has also been submitted to frequent inspection; likewise the Navy and Postoffice Departments. The President has been the subject of investigation twenty-three times, commencing with John Adams and ending with Woodrow Wilson. In fact, no department or activity of the government has escaped inquiry unless it be the Departments of Commerce and Labor since their separation in 1913.

Among the outstanding [recent] achievements which must be credited to congressional inquiries are the resignation of Secretary Ballinger after his sensational controversy with Gifford Pinchot in 1911, which contributed to the disruption of the Taft administration and the split in the Republican Party in 1912; and the ventilation of the scandals of 1923-24 when President Harding dismissed Director Forbes of the Veterans' Bureau and Secretaries Denby and Daugherty were forced to resign. If space permitted, many more illustrations of investigative activity could be given, all leaving their impress indelibly upon executive policy and action.

The attitude of the executive toward these inquiries has varied at different periods. Occasionally, Presidents

and members of the cabinet whose reputations or conduct have been assailed on the floor of Congress have asked for investigations. More often, on the other hand, the executive has vigorously resisted committee inquiries. President Jackson vehemently repelled the attempts of the Wise Committee to investigate his administration. President Buchanan protested against the methods of the House in the Covode inquiry. And, more recently, President Coolidge criticized the procedure of the Couzens Committee in employing Francis J. Heney to prosecute its investigation of the Internal Revenue Bureau.

In short, an analysis of the use of the investigating committee in American history clearly shows that in it Congress has an instrument, often blunt and clumsy to be sure, which it has consistently employed to supplement the power of the purse and the law-making power and to supplant in large measure the even more unwieldy power of impeachment. It is, indeed, singular that this device, long familiar to historians on account of the influence it has had upon the results of political campaigns and in war-time, should have been so largely ignored by political scientists, upon whose interest, as a usage of the American Constitution, it has a strong claim.

We have viewed the investigative function of Congress in its historical and legal aspects. It will now be interesting to note the relation between the activities of investigating committees and the exigencies of party politics. Any adequate analysis of the inquiries of congressional committees must take account of their political motivation; for it is evident that the influence of party has sharpened the edge of the inquisitorial sword. Indeed, all the great fundamental political issues which have agitated the nation since its birth are mirrored in these investigations. Radicalism and conservatism, federalism and states' rights, public lands and slavery, woman suffrage and immigration, Indian affairs and prohibition, the tariff and internal revenue—all have had their

repercussions in committee inquiries. The riddle of the parties may be read, in truth, in these activities. But if partisan acrimony has exacerbated the issues by which the fiber of the republic has been tested and has reflected a lurid light upon them, it has also whetted an appetite to root out corruption from the national administration and has quickened the effectiveness of congressional control of the executive through the medium of the investigating committee. The hope of gaining a partisan advantage is less open to criticism when it results in the disclosure of some real abuse, while the presence of a spirited opposition usually prevents the punishment or defamation of the innocent. If, therefore, the itch for power and partisan malice have been at the bottom of most congressional investigations, they have also been both a salutary force in the direction of good government and a strong support of the investigative function.

If many congressional investigations have been animated by partisanship in their inception, their methods, and their recommendations, it does not follow that they have been without benefit to or effect upon the public service. The value of many of these inquiries arises from the exposure which they bring and the cautionary example they set. The government is ventilated, administrative evils are remedied, and a warning is sounded of the unfortunate consequences which await other malefactors. That there is a possibility of abuse for partisan purposes, and that sometimes private affairs are unduly exposed to the public gaze is perhaps inevitable in a government of fallible men, but the injuries thus done are inconsiderable compared to the evils that would result from depriving Congress of the power to supervise the public business or from hampering its committees from getting at the facts by a narrow legalistic attitude on the part of the courts. In the final analysis, therefore, investigation may be viewed as the legitimate function and

duty of a political party. It would appear to be part of its duty to reveal the errors, shortcomings, and misdeeds of the representatives of the other party in office. Thus a political party, to borrow a Hobsonian phrase, carries about with it an alembic which transmutes its instincts into golden conduct.

This brings us to a consideration of the theory of investigation as a function of Congress and of representative bodies generally. Here the first question is, what were the circumstances which gave rise to the use of this device in America? Without going into the English antecedents of inquisitorial activity, which it would be interesting to do if space permitted, it would appear that such activity is immediately traceable to the separation of the three departments of the federal government set up by the framers of the Constitution. Their plan was so to separate the legislative, executive, and judicial branches of the government as to prevent the abuse of power by any one branch, and thus to safeguard individual liberty. But this balance of power and dispersion of responsibility proved an unworkable system of government and promptly precipitated a struggle for supremacy between the President and Congress, which, indeed, has gone on ever since. In the course of this contest, the events of which are familiar to all students of our history, Congress has steadily tended to encroach upon the executive and the executive has quite as steadily sought to resist such encroachment.

In England the outcome of two centuries of conflict between King and Parliament was the victory of Parliament. Several sanctions for enforcing ministerial responsibility to the House of Commons became well established in parliamentary practice. These were the power of impeachment, the legal sanction of budget control, the annual Army Act, ministerial questions, votes of censure, and the inquisitorial power. At the time the general English system of constitutional government was introduced into the American scheme, subject, of

course, to certain necessary modifications, parliamentary commissions of inquiry had come to be appointed either to unearth suspected abuses or to obtain information for the purpose of legislative reform. Due to the dependence of the executive upon the legislature, this method of control has proved to be a strong sanction in the English political system, even though employed with comparative infrequency.

But in the United States the struggle for congressional control has failed to eventuate in any such clear-cut decision. Under the incubus of separated powers, the rivalry has resulted as often in deadlock as in success for either side. The absence of ministerial responsibility or of some arrangement which would bring the administration face to face with Congress has left the issue unresolved. To be sure, Congress has inherited or acquired several means of control. They are, in brief, the power of the purse, the right of impeachment, the inquisitorial power with the corollary power to punish for contempt, the use of minute regulatory legislation, and the privileges of the Senate to confirm or reject nominations and to accept or reject treaties. Of these sanctions, the procedure of investigation might be expected not to constitute a means of control so far as any effective discipline of the administration is concerned and to exist solely as a method of securing information *de lege ferenda*. Historical analysis shows, however, that the committee of inquiry, although unknown to the Constitution and neglected or ignored by writers on American government, has been frequently and effectively used against the executive.

The investigative activity of congressional committees has arisen, then, from the artificial separation of the legislative and executive departments and in response to the need of an agency capable of holding the administration to a strict accountability. With the development of an elaborate administrative department at Washington and the great increase of powers exercised by the

executive branch, this need has become more and more insistent. Governmental efficiency, the protection of private rights, and the execution of legislative policy as the will of the state demanded of Congress that it devise methods of supervising the administration of the law and the conduct of executive officers. Ordinarily, to be sure, the exercise of discipline, direction, and supervision by the administrative officials themselves promotes honest and efficient government, while individuals may apply to the courts for the protection of their rights. But when these means are ineffective or inaccessible, as has frequently been the case, legislative control is the last resort. The principle that the proper office of a representative assembly is to watch and control the government has, in fact, been affirmed by such authorities as Mill, Wilson, Goodnow, and Ford.

As a means of control of the executive, the congressional committee of inquiry has three distinct uses or functions: to aid in legislation, to supervise the administration, and to inform public opinion. These may be treated briefly in the order named.

(1) *To aid in legislation.* This is the most familiar and least challenged use of the investigative function. It is derived from the law-making power, and as such is sustained by all shades of authority and opinion. It is available when the legislature is seeking information deemed necessary for framing new legislation or detecting defects in laws already enacted or in voting supplies. Inquiries having these ends genuinely in view are everywhere regarded as legitimate exercises of the legislative power. They are obviously a means of controlling executive policy and action.

(2) *To supervise the administration.* This was the first use of the committee of inquiry and is by far the most important end to which inquiry can direct itself, for upon it alone can the people depend for knowledge

of the honesty and purity of government. Especially is this true under a weak and lenient President, like Grant, who is unable, despite the best of intentions, to keep his house in order. When a President surrounds himself with men like the Babcocks and Belknaps of Grant's day, or the "Ohio gang" of Harding's time, who regard office as the spoils of victory rather than a public trust, or when mere incompetence in the person of a Denby or a Barry comes into office, the congressional committee of investigation is the last defense of the people. Its power is derived in this case from the power of impeachment given by the Constitution to the House of Representatives. As such, it is beyond question. It is available at all times to committees of either chamber, although a Senate committee cannot avow impeachment as its purpose, since this power belongs to the House alone. But legislation in some form is usually required to remedy an abuse, and if a Senate committee of inquiry announces a legislative intent, it is a principle of law that the courts will not question its motives.*

This type of inquiry discloses the actions of the executive and permits Congress to function efficiently as an organ of criticism. It fixes responsibility, otherwise confused under our multiple agency system, for every questionable administrative act and informs Congress when the executive is opposed to the enforcement of the law and when legislative action is therefore required. It watches, studies, corrects, and perfects our administrative departments. It discovers when a well-established policy of Congress has been reversed by a purely administrative act without the knowledge or sanction of Congress, whether it relates to the conservation of the public domain, or the maintenance of naval oil reserves, or the disposal of alien property, or the care of veterans, or political espionage, or what not. It contemplates a constructive remedy of administrative abuses. In a

* A final ruling on this point is expected from the Supreme Court when it delivers its opinion in the case of *McGrain versus Daugherty*.

period of "chronic presidential defeasance" such as we have had since the breakdown of Woodrow Wilson, it flourishes as a natural remedy for an otherwise irresponsible and intolerable administration. It calls ministers to account and is a more satisfactory remedy for official misconduct than impeachment. It affords a convenient channel through which the representatives of the people can get at the conduct of officials who have acquired greatly increased control over their lives. In short, it reveals inefficiency and dishonesty—serious evils which often cannot be exposed in any other way.

(3) *To inform public opinion.* Hardly less important than the use of committees of inquiry to supervise the administration is their influence upon and their expression of public opinion. The power and duty of the legislature to inform the voters regarding the administration of existing laws, to turn the searchlight on their government, is implicit in the whole theory of democracy and popular sovereignty. The debates on the early investigation resolutions in the constitutional convention clearly show that it was in the minds of the fathers. The duty of Congress to exercise this function has become increasingly urgent with the growth of governmental powers, the widening of the suffrage, the enlarged participation of the electorate in the affairs of government, the development of new means of communication, and the increase and dissemination of knowledge. It has been recognized by writers on government. As far back as 1888, Bryce wrote of the reciprocal influence of public opinion and legislative agencies. Thirty-three years later he found public opinion still the ruling power in the United States. It seemed to him in 1921 a wiser and stronger check upon the President than the Senate which the founders had set up to guide him.

The device of investigation is admirably adapted to this end. Both in the states and in the nation, legislative inquiries have served as an educational force and

as a vehicle of the public will. As a means of stimulating, guiding, and expressing the latent mind of Leviathan, the power of Congress to inquire, to inspect, to turn on the light, is of supreme importance. Through it an enlightened public opinion becomes the strongest check upon executive abuses. Beyond doubt, the possibility of investigation and exposure lays a restraining hand upon administrative officers. It makes them attentive to the demands of Congress and so strengthens the directive power of Congress over them. On the other hand, it restores public confidence, if the inquiry is honestly conducted and no corruption is found, and clears the names of the innocent. If dishonesty is shown, an aroused public demands the removal of the guilty, which follows quickly if the President is responsive to public sentiment. At least, that is the theory of it. And, as a rule, it has worked out that way. In 1924, however, the public wearied in time of the reiterated scandals and ceased to respond to the cry of the reformer. The people were first dismayed, then bewildered, and finally bored. The way the inquiries were conducted, the type of witnesses heard, the kind of evidence accepted at face value, the ignorant questions of committee members, and the apparent party bias of the investigators prompted the public to discount the full significance of the disclosures and limited the effectiveness of the investigations. And yet these senatorial inquiries (1924) aroused sufficient concern among the people for the purity of their government to force two members of the President's cabinet to retire. Such resignations, indeed, have not been rare events. The names of Randolph, Barry, Cameron, Belknap, and Ballinger may be recalled in this connection. Public opinion can sometimes drive an incompetent or dishonest official from office even without an inquiry. But inquiry centers the public eye upon a particular officer or department; the public, as a rule, is admitted to the hearings; a complete account of the

proceedings is published, and the people are kept currently informed upon how the administrative authorities are behaving.

There are, to be sure, manifest defects in the theory of democratic control. It overlooks the breach between the politicians and the people; it disregards the influence of lobbies engineered by special interests; and it postulates a constantly aroused and militant public opinion. But these defects only emphasize the necessity and importance of the congressional investigation. For it is the last bulwark of the nation against abuse of power by a bureaucracy which is losing touch with the people. It is their final defense against the special interests which seek to control the government for their own ends. And, finally, it protects an ignorant and apathetic people from its own weaknesses, though some of its force is spent in vain where the public fails to respond.

Investigation as a legislative function has a number of distinct advantages. It is, in the first place, a substitute for the unwieldy and cumbersome process of impeachment and is free from the dangers and disadvantages to which impeachment is subject. It does not involve the state in the serious inconvenience of budget refusal. And it provides a more effective control than mere resolutions requesting information "if compatible with the public interest." Great advantage lies in facts thoroughly established, charges and imputations carefully and painstakingly sifted, and evidence judicially canvassed. It is, in fact, no light matter to have a committee of inquiry pronounce, with all the authority that comes from a careful and judicial examination of all the elements in the case, an official guilty of negligence, incapacity, or dishonesty. The possibility of investigation sounds a warning to executive and administrative officers, high and low, so to behave as to avoid the danger and inconvenience of inquiry. Like the sword of Damocles, it hangs over all, swifter than impeachment, more penetrating than the courts. It is a safeguard against

imbecilities as well as corruption. It is the American method of achieving ministerial responsibility without reducing power. It is one of the checks in a system of checks and balances. It reflects fairly well the mind of the nation from which indirectly it receives power and for which it exercises it.

Secondly, it is a substitute for a system of administrative courts needed to protect the citizen from the arbitrary action of subordinate officials. With our industrial and commercial development, the extension of the sphere of governmental regulation has increased the contact of the public official and the citizen in numberless ways, and hence the danger of friction and dispute. Investigation not only tends to maintain honesty and efficiency in government, but it also safeguards the rights of individuals from flagrant violation.

In the third place, it is a security against the misuse of opportunity. There is always the danger that public positions will become places of profit, that office will be employed as a means of private plunder. "When any set of persons get opportunity they are naturally inclined to use it for their own advantage," says Professor Ford. It follows, therefore, that "the essence of representative government is this: that a watch is kept on the behaviour of those entrusted with power." The representatives must be secured in the exercise of their proper function as intelligent critics of the government.

In the fourth place, the hope of breaking for once and all the vicious circle from despotism to republicanism and back again, which has been the experience of political history, lies in a constitutional arrangement enabling the legislative authority to control the executive without impairing the force and celerity of its action. The English have solved this age-old problem by making their cabinet immediately responsible to the House of Commons and ultimately to the electorate and public opinion. But the partition of powers and institutions in the American system has hampered direct contact with administra-

tion and compelled a resort to the investigative function. Under such circumstances the representative assembly becomes the board of directors of the public corporation of which President and cabinet are the executive management and the citizens the shareholders.

Over against these advantages of the inquisitorial function are certain distinct limitations and disadvantages. In the first place, there are limitations of procedure. At best, congressional investigation is a blundering, crude, clumsy, and tedious process for getting at the truth, formulating criticism, or achieving effective control. It is an expensive business, though it has on occasion saved the country many times its cost. It is time-consuming, dragging on interminably and diverting the attention of the committee members from their other legislative duties. Many months often elapse between the inception of an inquiry and the final report of the committee and its disposition by the House, so that, when the facts are finally and fully determined, the matter has lost its news interest for the public. Inquiry is an instrument unsuited to frequent or continuous employment and justified only by grave circumstances. Furthermore, in order to secure the appointment of a committee of investigation, the support of a majority of those present in the chamber is necessary, which is difficult to obtain when both the majority of the house and the executive belong to the same party. The administration leaders will resort to every parliamentary stratagem to avert the danger. Many inquiries are proposed which fail to receive the support of the rules committee or the House and consequently fall through. Others are authorized but never reach completion, either because no evidence can be obtained, witnesses refusing to testify, or because of lack of sufficient time to make the inquiry before the end of the session, or for some other reason.¹⁰

¹⁰ Witness the investigation of the Department of Justice in 1924 by the Brookhart Committee which was held up by an order issued by Federal Judge Cochran preventing the committee from examining the bank records of Mr. Mally S. Daugherty, 299 Fed. 620 (1924). See also 40th Congress, 1st session, *House Journal* 126.

There is also the danger that the committee of inquiry may come to dominate the legislature at the expense of its other activities; while the prime procedural defect lies in requiring the same committees to perform the duties of legislation and supervision under the same set of rules.

In the second place, the hostile attitude of the legislature toward the executive, implicit in their traditions, impairs the fairness of the investigative function. As we noted earlier, many inquiries have been mere fishing excursions actuated by political malevolence or determined by the exigencies of an election campaign or bent upon gratifying personal animosities or casting reflection upon an opposite administration. Under such circumstances the congressional investigation becomes, at best, "a grand jury seeking the basis for an indictment of political misdeeds. At its worst, it is a gossip-broadcasting station, a scavenger of the private drains responsible for public malady." The proceedings, indeed, tend to take on a sensational character which Walter Lippmann describes as "that legalized atrocity, the congressional investigation, where congressmen, starved of their legitimate food for thought, go on a wild and feverish man-hunt, and do not stop at cannibalism."

The third defect of the investigative function is meddling interference in the details of administration. Investigating committees have sought at times to go beyond their depth; they have dabbled and dictated in matters outside their competence; they have too often been parliamentary busybodies. They have imposed an unnecessary burden upon the time of the executive and have been a nuisance to the bureaus. Sometimes they have made it difficult for executive officials to act promptly and fearlessly. They have upset the personnel of the government, with consequences not always to the public advantage.¹¹

¹¹ Secretary Mellon advised President Coolidge to this effect during the early stages of the Couzens inquiry into the Bureau of Internal Revenue.

The fourth and greatest disadvantage of this method of control is the fact that the executive branch is able at times to escape penalty for wrong-doing. In some cases this occurs where a majority of the members of the committee or chamber are in political sympathy with the administration or where the opposition fears retaliation. The committee's report is then a variant of the theme that "no one is guilty, but he would better not do it again." It occurs in other cases where public opinion and the press fail to rebuke the officers involved. Where minor administrative officials are concerned, the contact between Congress and the public opinion of the country is very slight. And even where wrong-doing is traced home to higher officials, the capacity of the public to respond seems to have definite limitations. If the public conscience does not censure the culprits, they will probably go scot free. "And after all is over and the murder out, probably nothing is done. The offenders, if anyone has offended, often remain in office, shamed before the world and ruined in the estimation of all honest people, but still drawing their salaries and comfortably waiting for the short memory of the public mind to forget them." Woodrow Wilson regarded inquiry as a defective means of exercising searching supervision, in that it does "not afford it [Congress] more than a glimpse of the inside of a small province of federal administration. Hostile or designing officials can always hold it at arm's length by dexterous evasions and concealments. It can violently disturb, but it cannot often fathom, the waters of the sea in which the bigger fish of the civil service swim and feed. Its dragnet stirs without cleansing the bottom. Unless it have at the head of the departments capable, fearless men, altogether in its confidence and entirely in sympathy with its designs, it is clearly helpless to do more than affright those officials whose consciences are their accusers."

The final limitation under which the investigative function labors may be expressed in the question: *Quis custodiet custodes?* Who will watch the watchmen? While the committees are inspecting the executive, what is to prevent them from employing their opportunities for private or party advantage? Professor Ford answers this question by the suggestion that the representatives be so situated that they can use their authority only on public account. They must be denied access both to official patronage and to the public treasury. They must be personally disinterested and have no power to vote offices and appropriations to their own use. They must not share in the appointing power or be able to select what business they shall consider. "A representative assembly is bound to become a public nuisance if it is allowed to do anything more than watch over the government and pass judgment on its recommendations. Any participation in the work of the government is fatal to the position of the assembly as an organ of control. It cannot at the same time be a participant in the exercise of administrative authority and also be a control over executive authority, any more than a man can act as an impartial judge in his own case." The best securities against the misuse of opportunity by legislators would be to abolish the legislative budget and to put it beyond their power to create and fill salaried offices and to originate directly either taxation or expenditure. When the representatives of the people are no longer able to solicit postoffices and bridges for their constituencies or plums and perquisites for their supporters, the assembly will be free to function as an organ of public control. All financial initiative should be entrusted to executive discretion. Budget control in legislative hands will sufficiently secure the supervision of the government, but to place the dispensation of patronage and emoluments in the same hands permits the per-

version of representative institutions and failure to perform their proper office.

In conclusion, it seems safe to say that the investigating committee has acquired a permanent, important, and salutary place in governmental practice. On the whole, its use has clearly justified its existence. Members of Congress do not fully appreciate the important part it has played in the course of our history. Busied with the tasks of the present, most of them enjoying short tenures only, they fail to realize that Congress has kept pace with the expanding powers of the President, thanks, in large part, to these legislative inquests. They do not suspect that the cumulative effect of almost three hundred inquiries has been a change in our constitutional arrangements not envisaged by the Fathers. The investigating committee has become more than a particular form of parliamentary procedure. Together with the standing committee system, it is "the buckle that binds, the hyphen that joins" the legislature to the executive. It has taken the place of the cabinet in the English constitutional system, has provided an effective means of control, has informed public opinion, and has considerably augmented the power of Congress. In it may be discerned the inevitable extra-constitutional growth which, like the bi-party system, has spread its influence throughout the federal government.

PROPOSED SYSTEM OF PARLIAMENTARY SECRETARIES FOR CONGRESS¹²

The present session of Congress has witnessed renewed discussion of the proposal that the executive departments of the government be brought into closer working contact with Congress by the institution of a system resembling the system of parliamentary secretaries in use in Great Britain and other countries. The principal feature of such a plan would be the presence in

¹² From *Editorial Research Reports*. p. 63-72. February 12, 1925.

the chambers of Congress of heads of departments or their deputies to give instant information for the guidance of legislators when bills affecting their branches of the public service were under consideration.

Such a proposal has been strongly advocated by congressional and other leaders in the past, and has received serious consideration, but has never reached the stage of final adoption. Opposition to the plan has been based upon a belief that any mingling of the functions of the legislative and executive branches of the government would be repugnant to the theory of the Constitution, under which three distinct branches were set up in the belief that their independent functioning would erect a system of checks and balances tending to inter-correction of ill judgments on the part of any one of them.

A recent attack upon this separate functioning was made by Senator LaFollette, with his proposal for an intermingling of legislative and judicial functions through the adoption of a constitutional amendment which would make decisions of the Supreme Court in constitutional cases subject to congressional review.

The effort to attach the executive departments more closely to the legislative branch has not taken the form of a proposal to amend the Constitution, but is embodied in legislation introduced in the House at this session which would provide for a system of parliamentary secretaries, through simple changes in the rules of the Senate and the House.

The first bill [H.R. 11364] was introduced by Representative Jacobstein of New York, a student of political problems, January 6, 1925. It provided

That on request of either the Senate or the House of Representatives, by resolution, and in the event they are accorded the same rights and privileges in debate as are accorded members of the respective Houses, it shall be the duty of the officers of the several executive departments and independent executive bureaus, boards, commissions and offices to attend the sessions of either House or their respective Committees of the Whole, and if not incompatible with the public interest,

answer such inquiries as may be propounded germane to the subject matter of the proposed legislation then pending in such House.

Representative Mooney of Ohio, on January 22, 1925, introduced H.R. 11855 which reads in part:

That the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Labor, the Attorney General and the Postmaster General shall be entitled to occupy seats on the floor of the Senate and House of Representatives with the right to participate in debate on matters relating to the business of their respective departments, under such rules as may be prescribed by the Senate and House respectively.

President Harding established the precedent of inviting the Vice-president to sit at his cabinet meetings. This furnished the first regular departure from the complete separation of the legislative and executive branches which has occurred in the recent history of the country.

Irregular contact takes the form of the appearance of secretaries or their assistants before committees of Congress to serve as witnesses when appropriation bills or other measures affecting the business of their departments are pending. Relatively minor officials, such as chief clerks or chiefs of divisions in the departments, frequently are called. The same is true of the heads, members or other officials of independent bureaus, boards and commissions. In all cases the power to summon lies with the legislative branch; no executive official may demand to be heard. In many cases executive officials request friendly members of Congress to have them invited to testify before committees but the contact is wholly indirect and irregular. The principal contact is during pendency of appropriation measures. When the appropriations committees of the two houses are holding hearings on appropriations, the heads of the departments, and frequently several of their subordinates, are summoned to explain requested appropriations. The work being performed with the fund appropriated the previous

year is inquired about and explained, and the intentions concerning the manner of expenditure of the new sums sought fully canvassed. It is complained by executive officials that in some cases committees strike out items without consulting the department affected, and without having knowledge of important work being done with the money previously appropriated. Much of the pressure for the right to attend sessions arises from these occurrences.

With increasing frequency a House of Congress adopts a resolution calling upon some executive department to make an investigation of some subject or to report certain data or explain certain circumstances to Congress. Executive officials contend that in many instances much legislative time could be saved by the presence of a representative of the affected department who, in many instances, could instantly explain the matter inquired about or furnish the information desired. The waste of time, effort and money in offering resolutions, having them printed and perhaps considered both in committee and on the floor, transmitted to the affected department and eventually complied with through cumbersome correspondence would be obviated. Not infrequently, it is claimed, Congress will take some action as the result of misinformation concerning some executive function. The action may later have to be rescinded and much time is lost, with possible serious interruption to some public business, when the presence of a representative of the department would have made possible immediate correction of the misinformation before action had been taken.

Several systems, in addition to those embodied in the Jacobstein and Mooney bills, have been suggested to bridge the gap between the legislative and executive branches. The most comprehensive would provide that either the President or each head of a department choose some sitting member of Congress and appoint him parliamentary secretary. Committee chairmen are chosen

largely by rule of seniority of service but where feasible, the Committee on Committees seeks to select a man conversant with the type of legislation which would be referred to his committee. Thus lawyers are appointed to the Judiciary Committee and financiers or economists to the Committee on Banking and Currency.

The plan would provide that some representative who had made a good record as a member of the Committee on Banking and Currency, be named as parliamentary secretary of the Treasury Department; a seasoned and skillful member of the Judiciary Committee would be named as parliamentary secretary for the Department of Justice; a good business man for the Department of Commerce, etc.

The objection has been raised that members would not have time to attend to such duties. To this it has been answered that to excuse such members from routine committee work would enable them to discharge the function. The parliamentary secretary would divide half a day between the department to which he was assigned and his committee, devoting as much time to the latter as was necessary to keep abreast of the business peculiarly affecting his department.

He would be present at all hearings before his own committee and the Committee on Appropriations or other committees where matters affecting his department were under consideration. He would be in attendance on the floor when any measure affecting his department was under debate or consideration of any sort, prepared to answer questions or to intervene in the conduct of the measure in the interests of expediting parliamentary procedure.

A simpler system would provide that some official of each executive department be assigned to the work of parliamentary secretary of his department. Thus, the undersecretary of the treasury would act as parliamentary secretary for the treasury. Each department has

one or more assistant secretaries, the first assistant in each case being generally charged with duties which make him a direct deputy of the head of the department. It would even be possible to designate the solicitor of a department. An official so designated would divide his time between the work of his department and attending sessions of the Houses of Congress and of their committees. He would be the known point of contact to whom members would resort in the first instance save, perhaps, on matters of patronage. Such officials, of course, would have no vote and not be actual members as in the first plan outlined above.

In none of the plans under discussion is it suggested that individuals performing the functions of parliamentary secretaries shall serve both as elected members of Congress, with full voting power, and as members of the President's cabinet. In adapting the British system for use in the United States it is necessary to keep constantly in mind Article 1 of Section 6 of the Constitution, which provides that "no person holding any office under the United States shall be a member of either House during his continuance in office." There is in addition a provision of law (Act of July 31, 1894) which prohibits officials from receiving salaries from more than one branch of the government service, if they aggregate more than \$2,500.

Both of the foregoing obstacles have been overcome in specific cases. Senator Smoot and Representatives Burton and Crisp are at present serving as members of the World War Foreign Debt Commission, notwithstanding the provision of the Constitution quoted above. The Comptroller of the Currency, notwithstanding the act of July 31, 1894, receives a salary of \$7,000 as an ex-officio member of the Federal Reserve Board, in addition to his statutory salary of \$5,000 as Comptroller. It is argued that the statutory and constitutional obstacles could be similarly overcome if it were desired

to institute a system of parliamentary secretaries under either of the plans outlined above.

On two occasions in the past select committees, appointed to study the question of closer contact between the legislative and executive branches, have reported legislation providing for a system of parliamentary secretaries, with the recommendation that it be enacted into law. The arguments at present advanced for the Jacobstein and Mooney bills are very similar to those set out in these old committee reports.

The first measure, favorably reported April 6, 1864, by a select committee of seven members, provided that cabinet members should at all times have the right to sit and to participate in debate in the House of Representatives, and that it should be their duty to sit at the opening of the sessions on Mondays and Thursdays.

Rules were submitted, including a provision that the clerk of the House maintain a notice book. Any member, desiring information on a given subject, might enter his request in this book. The cabinet head of the department affected would be called upon on a set day to reply.

Taking up the constitutional question, the committee declared no bar to exist to giving cabinet members seats on the floor. It cited as precedents the sitting of delegates of territories who, while having the right to participate in debate, were not permitted to vote. The report also cited a statute of 1787 providing that the Secretary of the Treasury shall make certain reports "either in person or in writing."

A striking reason given by the committee for granting permission to cabinet officers to participate in debates was that it would put a stop to lobbying by executive officials. The report said:

It has been notorious for years that by personal interviews with members, by private conversation at the office, in social intercourse at casual meetings on the floor of the two Houses, by verbal statements to the chairmen of committees—liable al-

ways to be misunderstood or misrepresented—by unofficial communications to the committees themselves, these officers originate, press forward, modify or entirely defeat measures of legislation.

On the constructive side, the report said:

Without disparagement to the ability or fidelity of members of Congress, it may be safely asserted that scarcely any measure is brought before Congress, whether of public or private nature, to the wise determination of which the departments may not contribute valuable aid, either by information as to facts or suggestions as to policy.

On February 4, 1881, a select committee of the Senate brought in Senate Report no. 837, 46th Congress, 3d session. It recommended passage of a bill similar to the measure reported to the House in 1864, except that it accorded the floor privilege of both Houses. The report said:

The bill confers a privilege and imposes a duty on the heads of departments. The privilege is to give their suggestions and advice in debate, by word of mouth; the duty is to give information orally and face to face.

The report reviewed the right of Congress to bring in those not members, referring (as did the earlier report) to the territorial delegates and also alluding to the chaplains who, although not members, are admitted to the floor. It further pointed out that persons contesting seats of members and their counsel are admitted to argue their cases. The constitutional provision that "each House may determine the rules of its proceedings" was also cited. Referring to the specific provisions of the Constitution concerning the powers of Congress over the executive branch, the report said, "Congress may, by inevitable implication, prescribe other duties and define other powers."

This report devoted considerable space to answering arguments that the scheme would violate the theory of separate branches of the governmental establishment. It asserted that the Constitution neither intended nor provided complete independence for the separate branches.

The Presidency may take no official action for which there is not legal sanction. Legislation requires the presidential approval or may receive the presidential veto. The laws the judiciary interprets are the laws of Congress. The report says:

If there is anything perfectly plain in the Constitution and organization of the government it is that the great departments were not intended to be independent and isolated in the strict meaning of these terms; but that, although having a separate existence, they were to cooperate, each with the other.

The select committee of 1881 also treated the question of executive lobbying. Referring to the intercourse between executive officials and members, the report said:

It is not necessary to say that the influence is dishonest or corrupt, but it is illegitimate; it is exercised in secret by means that are not public—by means which an honest public opinion cannot accurately discover and over which it can therefore exercise no just control. The open information and argument provided by the bill may not supplant these secret methods but they will enable a discriminating public judgment to determine whether they are sufficient to exercise the influence which is actually exerted, and thus disarm them.

The committee added

This system will require the selection of the strongest men to be heads of departments and will require them to be well equipped with the knowledge of their offices. It will also require the strongest men to be the leaders of Congress and participate in debate. It will bring these strong men in contact, perhaps into conflict, to advance the public weal, and thus stimulate their abilities and their efforts, and will thus assuredly result to the good of the country.

The early records of Congress reveal that it was the custom for the President and the heads of executive departments to appear in person on the floor of Congress, and to address the Houses, if not actually participate in debate.

Alexander Hamilton delivered his message on the public credit in person and answered questions. Thomas Jefferson, as Secretary of Foreign Affairs and as President appeared on the floor of Congress. General Knox as Secretary of War did likewise. It was on the basis

of these precedents that President Wilson revived personal contact with the legislative branch by delivering his messages in person.

It has since become the custom, when the President appears before Congress in person, for cabinet members to attend the joint sessions, taking their places at the left of the Speaker's stand. Cabinet members, who formerly have been members of Congress, have the floor privilege. They have appeared from time to time when bills affecting their departments have been under consideration, but such appearances have usually been followed by charges of executive lobbying.

Governments which either require or permit ministers of the executive branches to attend sessions of the legislative branches and participate in debate include Great Britain, Austria, Belgium, Brazil, Denmark, France, Germany, Greece, Italy, Holland, Norway, Portugal, Spain, Sweden, Switzerland, and the Central and South American countries. Practices vary as to the requirement that ministers be members.

In response to a question at a recent newspaper conference, President Coolidge expressed the opinion that parliamentary reform is a matter for consideration by Congress, and that suggestions upon this subject should not be expected from the executive branch of the government. He added, however, that much of the genius of the American Constitution is thought to lie in the distinct separation of the legislative, judicial and executive branches.

Charles G. Dawes has made no expression on the specific question of parliamentary secretaries but has expressed himself on the allied question of the Vice-president sitting with the cabinet. He has said in a recent interview (*Associated Press*, Chicago, February 5, 1925):

Long before my nomination or election I expressed myself to the effect that the plan of having the Vice-president sit with the cabinet was unwise. The cabinet and those who sit with it should always do so at the discretion of the President.

Our Constitution so intended it. The relationship is a confidential one and the selection of a confidante belongs to him who would be injured by the abuse of confidence, however unintentional. No precedent should be established which creates a different and arbitrary method of selection. Should I sit in the cabinet meetings, the precedent might prove injurious to the country. With it fixed, some future President might face the embarrassing alternative of inviting one whom he regarded as unsuitable into his private conferences or affronting him in the public eye by denying him what had come to be generally considered his right.

Thirty years ago Woodrow Wilson, in an article entitled "Mr. Cleveland's Cabinet," published in the *American Review of Reviews*, April, 1893, wrote as follows:

The degree of separation now maintained between the executive and legislative branches of our government cannot long be preserved without very serious inconvenience resulting. Congress and the President now treat with one another almost like separate governments, so jealous is each of its prerogatives. The Houses find out only piecemeal what is going on at the other end of the avenue, in bureaus which have been created by statute. Members have been known to grow uneasy, and even indignant, if cabinet officers followed the debates from the galleries. Congress, consequently, often gropes very helplessly for lack of guidance which might be had almost for the asking, while the tasks of the departments languish or miscarry for lack of appreciative cooperation and support on the part of Congress. We risk every degree of friction and disharmony rather than hazard the independence of branches of the government which are helpless without each other.

William C. Redfield agitated the question of departmental representation in Congress when serving as Secretary of Commerce, 1913-19. Having previously served as a member of the House of Representatives, he based his statements on experience obtained from both branches of the service. He advocated a less thoroughly organized system than the British, believing it unnecessary to have distinct parliamentary secretaries but believed secretaries and assistant secretaries or, perhaps, bureau chiefs, should have the right to attend sessions and answer questions and, under certain circumstances, ask them, when measures affecting their departments were under consideration in Congress.

After retirement he wrote, in his book *With Congress and Cabinet*, p. 42:

The weakness of the House as a working part of the government is insufficient knowledge of economics and of the government itself. Not all the members could state correctly the names of the executive departments represented in the cabinet. Almost none of them could tell you what services are included in each department. The halls of Congress are not a source of accurate knowledge concerning the government.

Secretary of State Charles E. Hughes, in an address before the Convocation of the University of the State of New York at Albany on October 17, 1924, said:-

It ought to be possible for cabinet officers to take part in the debates in both Houses on matters touching their departments and thus to be able to give exact information and to defend themselves against unjust attacks. A vast amount of time is now wasted in the Congress over the things that are not and never were. An ounce of fact is worth many pounds of talk. Under the present arrangements, a cabinet officer often hears of misunderstandings and of an outpouring of mistaken notions, which a brief statement from him could have corrected, but the misapprehension has been voiced and has gone through the country perhaps never to be overtaken. Mr. Justice Story in his *Commentaries on the Constitution* says on this point:

The heads of the departments are, in fact, thus precluded from proposing or vindicating their own measures in the face of the nation in the course of debate, and are compelled to submit them to other men, who are either imperfectly acquainted with the measures or are indifferent to their success or failure. Thus that open and public responsibility for measures which properly belong to the executive in all governments, and especially in a republican government, as its greatest security and strength, is completely done away. The executive is compelled to resort to secret and unseen influences, to private interviews and private arrangements to accomplish his own appropriate purposes, instead of proposing and sustaining his own duties, and measures by a bold and manly appeal to the nation in the face of its representatives.

We can preserve the advantages of stability and enhance the opportunities of executive leadership, not by overriding the cherished prerogatives of the Congress, or by attempting to gain an illicit advantage for that leadership, but by having a recognized contact through the regular admission of cabinet officers to the floor of both Houses of the Congress. This would not require any voting power on their part or any change in

the Constitution, but simply a change in procedure which could readily be effected by each House.

This desirable change could be made at any time under appropriate rules which would promote the convenience both of cabinet officers and the Houses of Congress. It could be required that questions to be addressed to the members of the cabinet should be filed a certain length of time before the appearance of the officer and except when matters relating to his department were under discussion his attendance would be excused. It would not be difficult to arrange the mechanism of such contact if its importance were recognized.

AFFIRMATIVE DISCUSSION

RESPONSIBLE LEADERSHIP AND RESPONSIBLE CRITICISM¹

To show that our essential weakness is institutional let us remove ourselves from the realm of personal controversy. Let us go back to the Spanish-American War, when Mr. Roosevelt was in authority, first as Assistant Secretary of the Navy, later as a military commander giving orders at the front. At that time there was the same confusion and waste in raising and equipping a small army of two hundred thousand men that there has been during the last year in raising an army ten times as large.

To appreciate what happened at that time, let us read from one of the most matter-of-fact, painstaking writers of history. Showing the embarrassment under which the McKinley administration labored, Sargent says:

Nearly everything had to be created; clothing, tentage, wagons, ambulances, arms—in fact everything in the way of uniform and equipment—had to be contracted for or manufactured. . . . Wagons, ambulances and horses could not be purchased immediately in sufficient number; great difficulty was experienced in obtaining sufficient canvas to supply the army with tents; and no khaki cloth for uniforms was to be had in the United States. All this resulted, of course, in great inconvenience to the troops. The volunteers had to accept an inferior rifle with black powder; a number of regiments could obtain no tents; the entire army was short of transportation; and many soldiers had to go to the tropics and fight in winter clothing.

The confusion in leadership was appalling—and what is more, profiteering had a suggestion of venality that

¹ From article by Frederick Cleveland, secretary, Industrial Service and Equipment Company, Boston. *Academy of Political Science. Proceedings*. 8: 24-41. July, 1918.

today is almost wholly lacking. There was more of the spirit of gang loyalty and less of the spirit of individual devotion to a great national cause. There was more of the confusion and waste and wantonness of the Civil War. But this confusion of leadership and administration was not to be charged to lack of quality in President McKinley—not even to Mark Hanna.

Consider the kind of leadership we then had. On the supply side of the military establishment there were twelve different bureaus or offices, which had been created—not by the President as the responsible institutional military leader for his assistance and guidance—but established by Congress. Congress using its legislative powers had violated the spirit of the Constitution, which makes the President, as commander-in-chief of the army and navy, responsible to the people. And it set up against the President a bureaucratic feudalism; one lord was given jurisdiction over the buying and making of guns and ammunition—responsible to a committee of Congress; another over buying or making clothing and equipage and providing quarters—responsible to a committee of Congress; another bought food—responsible to a committee of Congress; another bought and dispensed medicine—responsible to a committee of Congress; and so on through the entire list.

These functionalized, bureaucratic, feudal lords did not look to their titular superior, the leader chosen by and responsible to the nation, for powers and policies. They looked to irresponsible committees. And because of the independence which was thus given, each chief built around himself a bureaucratic wall that even the constitutional chief executive himself could not get over or break through without wrecking limitations and provisos that had grown up in statute books as thick as moss on the shady side of a moat. In violation of the spirit of the Constitution, and of every ideal of democracy, Congress had taken upon itself control over each bureau of

the administration. It had taken the initiative and the leadership that belonged to the executive in any scheme of responsible government and divided it among over a hundred different standing committees which, sitting behind closed doors, became both the real Congress and the real head of the administration. This was the institutional provision for leadership that existed at the time of the Spanish-American War. And it still existed when we entered into this war against Prussianism—not alone in the national government, but in most of our state governments as well.

That we got out of the Spanish-American War without enormous sacrifice of blood and treasure, and loss of our national prestige, is due to the fact that a much less effective, moribund leadership had grown up in autocratic Spain. Consider what might have happened to Shafter's seventeen thousand men if the Spanish army of one hundred and ninety-six thousand men then in Cuba, more than twelve to one of the American forces landed, had been under the direction of a Foch, a Haig, or a Hindenburg. Shafter debarked his army without opposition, his only loss, caused by accident, being two men and a few mules, and the only difficulty experienced being his lack of debarkation facilities. So destitute was the army of means of landing that it was necessary to throw the mules and horses overboard and make them swim for shore. Although there had been ample time and opportunity for the Spanish generals to have brought their army into action between the 22d of June and the 1st of July, Spanish records show that they had only nine thousand in the vicinity of Santiago. The Spanish soldier proved a good fighter, but he lacked leadership. If he had had good leadership it is thought that it would have taken not less than a half million men and possibly two years to reduce the island of Cuba. Judged by results at the Battle of El Caney, this seems a conservative estimate. The only reason for our early

success in the Spanish-American War was that the enemy was worse off for leadership than we were. Victory came to us by default. But we can look forward to no defaults under Prussian leadership.

Let us follow the Spanish-American War experience a little further, for it is helpful. Let us follow it into the administration of Mr. Roosevelt, who saw and felt the lack of unity of direction and control. As illustrative, let us consider the futility of Mr. Roosevelt's effort to put unity of direction and control into the military establishment—due to a popular appreciation of the need. The enormous cost of the Cuban campaign, short though it was, the confusion and waste on every side, was the reason urged by Mr. Root in 1903 for organizing the general staff.

Yielding to this influence, an act of Congress was placed on the statute books. This did not break down bureaucratic walls. Even with Mr. Roosevelt as constitutional commander-in-chief and Mr. Root as Secretary of War, these old bureaucratic, feudal monopolies were protected by Congress as true representatives of our *laissez faire* philosophy of government. These were so firmly intrenched that it took fifteen years and then several months of confusion in preparation for a war which left no doubt in the minds of the people and their representatives that the military powers must be placed under strong, centralized leadership, before the general staff was permitted to function effectively.

Mr. Taft felt the same handicap, and through his entire administration he endeavored to have the principle of executive leadership accepted in matters of administration and finance—making the representative body a court of inquest, with powers to enforce its conclusions through its constitutional right to control the purse. The futility of this effort is shown in the treatment accorded to his recommendation of an executive budget procedure: The idea was featured in the press and favored editorially. Only two newspapers opposed it.

In a referendum taken by the Chamber of Commerce of the United States, only one trade body voted against it. But what was not seen or understood was that although it would require no constitutional change, as was set forth by the President in his message, it would require a complete change of procedure. Instead of having the machinery of Congress so geared up that the initiative in matters of administration and finance could be divided among over a hundred irresponsible committees, it must come from a responsible executive, the administration itself—leaving Congress free to review, criticize, discuss and finally to approve or disapprove the acts and proposals of those whose duty it was to render public service. Mr. Taft proposed that the President and the cabinet should take the initiative and then stand the test of open public questioning, criticism, and discussion before Congress, thereby making the President and his cabinet responsible for every measure which they considered essential to the adjustment of the working machine. This done, Congress would be free to hold the executive to account.

Since this was a frontal attack on the system of "government-by-congressional-committee," and the entrenched bureaucratic autocracy that had grown up under it (a system that had been inducted with the consent and approval of the people for the purpose of making the executive weak), Congress assumed that the country would not support the proposition to give the initiative to the cabinet, while Congress made it responsible through their power to control the purse. The Constitution admitted of such a practice. But opposed to it was more potent habit—a habit which could not be changed without mandate from the people.

The recommendations of President Taft for the introduction of an executive budget procedure were received by members of Congress with an air of patronizing superiority. When President Taft showed the seriousness of his purpose by issuing an order to the

members of his cabinet to prepare such a budget, a clause was injected as a "rider" on a deferred appropriation bill passed in August 1912, the intention of which was to prohibit it. This "rider" was slipped into the bill in the committee room, and so deftly was it done that few members of Congress knew that they were voting for a proposal aimed to prevent the President from doing what he claimed to have a constitutional right to do.

President Taft, however, did not falter. He issued a letter to Mr. McVeagh, as Secretary of the Treasury, stating that this rider could have no force as against the constitutional right of the President. Then he asked the cabinet to proceed to make a budget as requested. After various interferences and delays, due to the attitude taken by congressional committees, a budget was submitted. It was promptly consigned to a pigeon-hole in the thought that it would be lost sight of. It was published, however, at the expense of the President's appropriation, and has been at work every day since—out in the back country among the people. So firmly has it taken hold on the minds of thinking men that it promptly became an issue in every state in the union, over forty of them having passed laws relating to it. Furthermore, in the last presidential campaign, it found expression in the platform of each of the leading political parties.

In all these laws, however, this thought has failed to take hold: that a budget is only a procedure for holding an executive responsible by forcing him to come forward, tell what he has done and for what he asks support in the future; that there can be no such thing as a budget so long as the initiative in matters of finance and administration is in one or more legislative committees. All that the people can hope to get is a committee report, after practically all the decisions have been made, with little or no opportunity given for in-

quiry, criticism and discussion which will reach the people. What is called a "legislative budget," as has been shown in the state of New York, is simply a more orderly way of conducting "invisible government."

President Taft strongly urged also that the executive be permitted so to organize the administrative offices and bureaus as to enable him to discharge his responsibility to the public—to carry on the business of the government with a minimum of waste. But it was not until the life of the nation hung in the balance, and every human and material resource was plainly needful to turn the scales in its favor, that the idea that national economy and governmental efficiency were desirable began to be taken seriously.

Mr. Wilson has done much to prepare the way for responsible leadership. He was one of the first American writers to point to the fact that practically all initiative had been taken over by standing committees of Congress, thereby leaving the executive a negative force. As governor of New Jersey he stood for executive leadership. When he became President he upset the traditions of a hundred years by appearing personally before Congress to discharge his constitutional duty of addressing them on the state of the union. And when it became apparent that the committee system must be abolished to enable the executive to give unity of direction to the army commissions, bureaus and offices which were required to cooperate in the prosecution of the war, he assumed personal responsibility for the Overman Bill giving to the President the power to reorganize the machinery of administration.

This power was finally given, as a war necessity. The bill was passed. But note the reservation. It was passed with an apology and a promise that after the war is over Congress will again take the initiative out of the hands of the executive and replace it in the hands of a hundred or more irresponsible committees of the

representative branch. With all the appeals which have been made to the public, with all that has been said about the necessity for national economy, there are still Americans who insist that inefficiency and waste are the price to be paid for democracy—that we must choose between this and autocracy. If this conclusion is accepted as a principle for future action, the days of American democracy are numbered. That weakness and waste are not essentials of democracy, France has amply proved. France has proved that democracy can be strong. Great Britain has proved that popular control over political leadership is not incompatible with strength.

This brings us to our second point of institutional weakness. Strong, responsible leadership, as a means of developing an efficient public service, is not only part of the mechanics of democracy to which attention should be given in this time of war stress. Wastefulness is not necessarily a fatal national vice. Except when confronted by threatened invasion, we may still be slothful and survive. We may even continue to feel superior about it so long as brave France and efficient Japan stand as buffers on either side of us against the spread of Prussian aggression by land, and Great Britain spreads its protecting wings over the seas. What must prove our fatal institutional weakness, unless it is overcome, is irresponsible criticism and publicity.

When Congress gave over to its committees the initiative in matters of finance and administration, it unfitted itself to act as an independent forum. It introduced what has come to be known as invisible government—leaving to the people only irresponsible agencies through which to keep informed. Unless we provide the means whereby public opinion may have accurate knowledge of the facts and conditions which must be taken into account in determining whether one measure or another, or one leader or another, shall be supported; unless the electorate, as a jury before whom public adminis-

trations are tried, can act on evidence instead of mere allegation and persiflage, on material facts instead of demagogical appeals to prejudice and popular passion—our democracy will rest on no firmer a foundation than does the democracy of Russia.

When an accusation is made that a public officer has been inefficient in management of a public trust, and wasteful of public funds, this is quite as much to be considered a charge of "infamous" crime against democracy and against the state as information and complaint of injury to private property. The state is quite as much interested in any act or proposal of an authorized executive which bears on a matter of public policy as it is in the properties or interests of individuals. If a person accused of doing injury to life or property is entitled to the protection of "indictment by a grand jury," "the right of speedy and public trial by an impartial jury," "the right to be informed of the nature and cause of the accusation," "to have compulsory process in his favor," and "to have the assistance of counsel" before he can be marked by the public press for popular disfavor and penal discipline, even greater is the need for a procedure which will give to the people and their servants protection from false accusations of the designing and the selfish.

It was the fair intent of our Constitution that the representative branch should be a court of political justice. Massachusetts still calls her representative branch her general court. What we have lacked is not an agency of political justice, but a procedure which will keep the representative body as a grand jury from becoming a party in interest. By permitting Congress to take the initiative we have consented to making it unfit. We have deprived ourselves of the means of independent inquiry with the benefits of counsel. This, and a public consciousness that when accusation is made against a public officer the life of the state and its ma-

terial interests are being threatened, lie at the foundation of democratic control. Any charge made against persons chosen for positions of public trust is a matter which should be brought before a responsible tribunal. This is not a matter to be bandied about by scandal-mongers and irresponsible persons, and given currency under assumptions of constitutional guarantees of the right of "free speech and free press."

When we have adequate means for inquiry, discussion, criticism and publicity in a duly constituted court of political inquest, before the bar of which those who are responsible for executive leadership are required to come and give a full account of themselves; when this court has the power to enforce its judgments by control over the purse, subject only to an appeal to the electorate, we need not fear. Without such a court of political justice, "free speech" and "free press" may be quite as much a menace as a means of protecting our liberties. In fact, no one can be free who is at once ignorant and unjust. Under our present institutions we have no way of knowing whether our information comes from a "free press" or is only an "equity redemption" that is speaking to us through editorial and news columns.

Every country which has "responsible, visible" government has adopted a procedure for making its representative body a court of inquest for the people. We Americans first weakened our executive, then deprived ourselves of a means of responsible criticism. We violated the principle of separation of powers, by taking the initiative in matters of finance and in matters of administration from the executive and turning it over to Congress. Congress and our state representative bodies, using the same method, have done the natural thing—instead of performing the functions of a court or inquest, they have applied "gag rule." We wittingly deprived our administrations of unity of plan and action.

We unwittingly deprived ourselves of the means of responsible inquiry and criticism, thereby making the people distrustful of all our public servants—ready to listen to any person who has the wit to commercialize attacks made on those who have risen to positions of trust and whose names have news value. The more unscrupulous the person making the attack under our system, the greater the personal advantage.

AMERICAN POLITICAL SYSTEM ²

No political system has ever been so vehemently assailed as that of the United States; nor is there any upon which criticism has produced so small an effect. Its large outlines have hardly altered since Bagehot, some sixty years ago, analyzed its deficiencies with a subtlety and penetration which remain unsurpassed. Yet there seem no signs that a foreign observer can detect which indicate any widespread desire for alteration. The Constitution as a body of working rules is still, for the average American, too remote from his daily vocation to arouse a profound interest. The very prosperity of America tends to make him belittle their significance. So few politicians have anything like a national significance, so many are politicians because they have failed in other walks of life, that the inhabitant of Main Street is easily tempted to venerate where it seems an extravagant luxury to comprehend.

Yet, if we assume that democratic government is desirable, there is hardly a canon of institutional adequacy against which the American system does not offend. It is desirable that the source of responsibility for governmental error or wrong should be clear and unmistakable; the American system so disperses responsibility that its detection is approximately impossible. It

² From article by Harold J. Laski, Professor of Political Science, University of London. *Harper's Monthly Magazine*. 157: 20-8. June, 1928.

is urgent that the working of institutions should be conducted in the perspective of discussion which educates and clarifies the public mind; but the essential tasks of operation in America are almost wholly concealed from the public view. It is important that the occupants of high office should be chosen upon the basis of ability and experience; yet both the President and his cabinet are selected by a process which, if it resembles anything, is akin to a dubious lottery. A governmental system, moreover, should be sensitive to the opinion of its constituents, and maximize the opportunity of translating a coherent body of doctrine into statute; yet it seems the purpose of American institutions deliberately to avoid that sensitiveness, on the one hand, and to prevent the making of coherent policy upon the other.

America is the most prosperous of modern states; and its riches conceal from the public view the cost of its institutional inadequacy. It has hardly emerged from planning the development of a continent; and the possibilities of its natural resources have served to obscure the price it may one day have to pay for neglect of the elementary maxims of good government. For the test of a system comes only in times of crisis, and since the attainment of permanent unity no problems of European magnitude have had to be faced. Yet the permanent hold of the Democratic Party upon the south, the deliberate refusal of much that is best in American life to think of a political career, a financial system that, both upon the side of supply and estimate, is a woeful absurdity, the almost total failure to conserve natural resources, the invisible stranglehold of wealth upon the two great parties—these are only some of the major consequences of the system now in being. America, in fact, is applying 18th century ideas and institutions to the problems of a 20th century civilization. Prosperity may postpone the gathering of the harvest; but one day, assuredly, a new generation will reap its fruit.

It is worth while to apply these hypotheses to the institutions themselves in detail. The presidency is the most outstanding, for it has become the most powerful lever of authority there is in the modern world. Yet what is startling about its character is the haphazard way in which its occupant is chosen. An English prime minister serves a long apprenticeship before he reaches the pinnacle of a political career. Mr. Gladstone was thirty-five—Disraeli thirty years—in the House of Commons before he was so chosen; both had been for long years essential figures in public life whose qualities had long been tested in the House of Commons. Even Mr. MacDonald and Mr. Baldwin, who arrived at power through accident, had been members of Parliament for nearly twenty years. And each was able to retain office only on the exacting condition of being able to satisfy in debate a legislative assembly deliberately designed to maximize the consequence of his mistakes.

The American President is in no such position. No one knows who he is to be. He is only too often the product of a series of accidents in which what is most important is not his possession of quality or of ideas but public ignorance about him. He may well be quite unknown to the nation; he may even, like Mr. Roosevelt or President Coolidge, become President by the act of Heaven instead of by the choice of the American people. He has to assume the leadership of a party without, at least necessarily, being trained to that delicate function. He has to influence a legislative assembly where each chamber is active and powerful; and, at the worst, he may have a majority in neither, or, at the best, be compelled to purchase acceptance of his policy by shifts and expedients which destroy its logic or weaken its application. He has never any assurance that his will must prevail. He lacks the exhilarating experience of defending his policy in the full light of day. He has not grown up in fellowship with the instruments he has to use;

and the knowledge that a second term is almost certainly the maximum period of leadership does not make for that continuity of allegiance to him upon which the shaping of a great policy depends. He has even to gamble in a large degree upon the quality of his cabinet associates; and since they are rather his servants than his colleagues, he must inevitably bear the burden of their mistakes. Because, moreover, tradition has made the main embassies the reward of service in his election, he will be compelled to rely upon a diplomacy largely amateur in character; no American ambassador in Europe in 1914 had any previous experience of foreign affairs. He has to accept the personnel of Congress through which he must seek to work it; and, even then, he may find that the election in mid-term destroys the men whom he employs. Nor is this all. His period of office is so short that he has hardly become used to its exercise before he is driven to think of re-election; and if he is attracted by this notion, the price he must pay in complaisance and bargain will be well-nigh intolerable. And even if he is successful in forcing a policy upon Congress, he may well find that the exigencies of the spoils system, improved though it has been of recent years, fail to give him the instruments which might secure its successful application.

This, at least, is the logic of the system; and it is not an adequate defense of its deficiencies to urge that, despite them, men like Lincoln and Cleveland and Wilson have all been Presidents in the last seventy years. The fact is that anyone who studies in detail even the greatest of presidential careers can hardly but be convinced that the necessary result of its environment is to minimize the best qualities of the occupant. He is fettered where he should be free; he is set apart where he should be in the midst. The absence of a clear organic relation between him and the legislature erodes his power while it destroys legislative responsibility. The

rigidity of the system in which he is enclosed, the knowledge that his power is fugitive, the checks and balances which surround him on every hand, these serve only to illustrate the basic thesis that the separation of powers is the confusion of powers. No executive in the world disposes of greater authority; no executive, either, is so deliberately or perversely hampered in its fruitful exercise.

Nor is the position of an American cabinet member so much more attractive. It is only by presidential favor that he attains his office. Service to the party, outstanding ability, long experience in affairs, none of these things give him a prescriptive right to his position. He is a personal nomination of his master. He can make his policy effective only as he convinces the President on the one hand or placates Congress on the other. Resounding success may bring him no credit if President or Congress be jealous; and he has nothing to hope for from the prospect of resignation. Nothing, indeed, in the context of the cabinet has been more significant in recent years than the fact that Colonel House was able to do more than any member of the cabinet of his time without finding it necessary to assume office. For the work of a cabinet member is too little in the public view to count in any final way. Like a sudden tempest, they are come and gone. To occupy a place gives no lien on the gratitude of the party. The relationship to Congress is too tenuous and indirect to make it easy for them to impinge at all concretely on the public. A few men, like Mr. Hay and Mr. Root, have been significant in modern times; but, in general, neither long experience nor outstanding qualities have been necessary for the tenure of cabinet office. The requirements of sectionalism, moreover, act as a deterrent to possible aspirants; the need to represent the west may check the ambition of youthful ability in New York or Cleveland long before cabinet office has become an object of conscious

desire. The process of selection is far too haphazard; the prospect offers no such measure of reasonable certainty as parliamentary systems afford. The power of the office, moreover, is only dubiously attractive as against some of the alternative political positions. A senator for instance, need never resign in order to express dissent; and where he differs he can speak from one of the few political platforms in America to which attention is paid. But a cabinet member in retirement is, with rare exceptions, one of the unburied dead; and it is seldom that public opinion desires his emergence from the tomb.

Much, doubtless, would be altered if, as so many have desired, the cabinet member were to speak upon the floor of Congress. But in that event the whole character of the American system would necessarily change. For the articulation of the cabinet with the legislative assembly would compel the development in America of parliamentary government. Today it is impossible to assess the qualities of a good American cabinet official. But if he were to sit in Congress, even to the limited extent that Chief Justice Taft has desired, the basis upon which he is selected would have to be completely changed. The ability to speak, the grasp of the subject, the knowledge of men, the instinct for administration, all these would become at once essential qualities. An outstanding secretary in Congress would immediately challenge the position of the President himself. Collective cabinet responsibility would automatically develop; and the resignation of a secretary whose authority in Congress was recognized would have important consequences upon the administration and its policy. The habit of debate in the House of Representatives would be restored, and, with its restoration, there would be both an increase in the significance of opposition, and a growth of public interest in the process of politics. A secretary charged with corruption, like Mr. Daugherty or Mr. Fall, would

have to meet his accusers face to face—a fact which would, at a stroke, raise the level of political morality in America. Such a development as this, of course, is contrary to the whole tradition of the American system; and the possibility of its occurrence is obviously remote if only because, in a period of calm, peoples can rarely be persuaded to prepare themselves for times of storm. Yet it would be a service if an American statesman of authority were to remind his people how largely the present system was born of accident; had Madison and Jefferson taken a different view of Hamilton the lines of institutional evolution in America might have moved swiftly towards a neo-parliamentary form.

To any critical observer trained in the legislative experience of France and England, the House of Representatives must necessarily seem unworthy of a great people. It commits every fault against which the canons of political science can utter warning. The first business of a legislature is to illuminate great principles in debate; but the House has long since ceased so to discuss public questions that the electorate can be persuaded to follow their analysis. Its essential proceedings should be conducted in the public view; but the main work of the House is done in the dark recesses of committee-rooms whence only rumor and legend emerge for the edification of the press. A legislature should be so organized that the opponents of government have a clear and full opportunity to make their case against its policy. But the deliberate purpose of the organization of the House is to reduce opposition to a speechless nullity. The private member of the House of Commons is already a sufficiently pathetic figure; but he is a giant by the side of the American representative. For the rule of residence starts by limiting the political stature of most American representatives to that of natural parish councillors; while the shortness of the term and the amazing complexities of congressional procedure mean inevitably

that before the congressman has begun to master his work the grim problem of re-election confronts him. His quality, too, necessarily deteriorates under local pressure. A congressman cannot attain a perspective about national issues if his constant thought must be about patronage in, and appropriations for, his district. When he arrives at Washington, there awaits him no creative opportunity. The chance to sit on a committee with no big issues to debate, the prospect of introducing bills which will never be reported, the opportunity to write speeches that will rarely be delivered—these are not horizons towards which an able man will strain.

The proper commentary upon the system is the simple fact that most congressmen are unsuccessful lawyers. Even if they stay long in their seats—and the degree of congressional wastage is startling—the career that waits them is not a very attractive one. Very occasionally with McKinley, it is a path to the presidency, or more frequently, to a senatorship; but, in general, it is a life filled with frustrations. No congressman has ever exercised the influence over the nation that Bright or Cobden did in England; nor does he make the impact on public opinion of an eminent educator like Dr. C. W. Eliot or a rich manufacturer like Henry Ford. As a career, indeed, or a source of influence, it is not unfair to describe the House of Representatives as a refuge for the mediocre in national politics.

The Senate is a very different institution. With the Supreme Court, it has been the outstanding success in the American system. Its numbers remain small enough to give individuality to its members and to make possible a debate that is almost always real and not seldom instructive. It has real and coherent authority through its power to ratify treaties and to share with the President in the making of appointments; though the recent decision of the Supreme Court in the Myers case has done something towards rendering ineffective the real

value of the appointing power. The members of the Senate have a long enough term to enable them, if they can, to create a sense of their personalities among the electorate. They are thus able, as congressmen have never been able, to act as the embodiment of ideas. Webster, Calhoun, La Follette, Senator Borah, have all been able, in their very different ways, to make the Senate a platform from which to mold the opinion of the nation. A senator, moreover, just because the area of election from which he is drawn is wider, tends to be a more considerable person than a congressman. He plays, as a rule, a much bigger part in his state; Calhoun and South Carolina, Wisconsin and La Follette, were, for years, almost interchangeable terms. He tends, also, to be a person of real significance in the party. He can shape its destinies in a way hardly open to members of the House.

Not, indeed, that the Senate as an institution is free from grave defects. Its very power—greater than any other legislature possesses—makes it a rival to the President; and it too often yields to the temptation to destroy the coherency of legislation as an exercise in the use of power. Its authority has too often drawn to it men notable either for the wealth they desire to protect or the corrupt state-machine they are anxious to preserve. It stands a little stiffly on its dignity; and this too often makes it both debate for the mere joy of debating and legislate without due regard to the facts involved in its measures. It is altogether free from that grave defect which brings the new House of Representatives into being long after public opinion about its character may have changed; but it suffers gravely from the fact that the system of partial renewal—while it makes, of course, for stability—prevents it from being subject to a total expression of popular judgment. Where, therefore, as is frequently the case, it is at odds with the President, the latter has no real opportunity of forcing matters to

a decisive issue at the polls. The time-table is always on the Senate's side. And this inevitably means that the Senate is tempted to seek a policy of its own without too close a regard to the wants or needs of the executive. Because, as a legislature, it never dies, because, also, it shares so largely in the executive power, it tends less to correct the deficiencies of the latter than to absorb its authority. Almost always it will control a weak President; almost always also it will destroy the effectiveness of a strong one. It is, by the definition of its place in the institutional scheme, a permanent alternative government to that of the administration; and, of this, it is the necessary consequence that American legislation will rarely be intelligible to those affected by its results.

But the American legislature must be judged less by its internal character than by its external relations. Here of course, the Fathers proceeded upon assumptions which, in their own day, were judged exigent; and it is difficult to blame them for a construction which Montesquieu and Blackstone had cannonized. Yet today it is supremely difficult for a foreigner to understand how Americans can remain satisfied with the institutional contact between executive and legislature. Here once more, the system offends against every reasonable canon of political science. The separation of powers means that both legislature and executive must have fixed terms. Each lives a life in large part independent of the other, a life, indeed, that may well be conceived in antagonistic terms. Neither, as a result, has an interest in the other sufficient to secure a coherent and responsible policy. The legislature cannot get the executive which it wants; the executive is never sure of a legislature to its liking. The result is to dissipate the energy and impair the efficiency of each. The legislature never has its proper work to perform, which is to make a government to its liking; and the executive can never do its proper work of applying a policy which it fully approves. Each has a certain interest in the failure of the

other. A President who always had his way with Congress would completely thwart its personality and purpose. A Congress which trampled on the President would—as the example of Andrew Johnson shows so well—make impossible a logical body of reasonable legislation. If either is to figure successfully in the public view, it must be at the expense of the other. And nothing that either can do will affect the life of the other. Each derives its power independently from the people, and each, whatever its character must await the fixed period for a refreshment of power. The exigencies of party may, to some extent, mitigate the viciousness of the principle, but it can only obliterate in part the magnitude of the evil.

Nothing so well illustrates this radical defect as the realm of finance. In a parliamentary system, the minister has a plan and he stands or falls by it; if the legislature will not accept his proposals either it seeks a new government, or he demands a new legislature from the people. Whatever the choice, the result is at least logical and coherent. But in the American system nothing of the kind occurs. The minister makes his proposals; he seeks to placate the chairman of the appropriate committee. But the latter, however well intentioned, will not fully endorse the ministerial plan. He is himself, to begin with, a kind of quasi-minister, with a reputation to make. He has members on his committee who must be placated in turn. The member for Jacksonville thinks that something must be done for his constituents: and the member for Lincoln was promised a new post office. When the measure has been sufficiently mangled in the House, the process will be repeated in the Senate. A thousand competing interests, rarely related to the needs of efficient administration, must be conciliated. What emerges may even, as a total, look not unlike the original proposals of the executive; but it will be rare to find that the itemized details are the same. The truth is that for every subject, from finance downwards, the

United States has at least three ministers; and neither the interest, nor the point of view, of any of them is identical. And since the cabinet lacks any collective responsibility, since the party caucus is far too big to give integration to policy, the result is a partial chaos in all that is done. The presidential system, in brief, makes the executive and the legislature independent at exactly the point where dependence is required; and it secures their inevitable antagonism of interest where public policy requires a unity of interest. Nor can either, by the fact of independence, bring home responsibility effectively to the other. The power of punishment is outside in the nation; and the latter can speak, only not when the event requires, but when the Constitution permits. But it may then be too late.

Other consequences of importance follow from this separation of Congress from the executive. No verdict can be sought from the people at a time when a verdict should be taken; and when the fixed epoch of judgment arrives events will have done much to obliterate the material upon which a verdict should be rendered. To an Englishman, for instance, it is literally incredible that no serious penalties should have been visited upon the Republican Party for the scandals of the Harding administration; but it was of the essence of the American system that when the American people, as here, was wanted, it could not be found. The result is an inevitable diminution of the popular interest in politics. The work of government requires a perspective of drama. The knowledge that grave error will precipitate a catastrophe keeps not only its members and the opposition alert, but also creates an active public opinion outside. For the latter feels that its influence may be creative. It may, by its approval or its antagonism, destroy the work in hand. It inquires into what is being done. In America, that is only partially the case. Public opinion is special and interested rather than general and disinterested. It

is a trade which wants a duty on the goods it manufactures, and the road to its wants is not through the channels of opinion but the avenue of the lobbyist. There is hardly a great subject of general import upon which an agitation in America can hope effectively to influence the government; for the maximum obtruseness on the part of the latter will not advance by one day the period of judgment at the polls.

Experience, in other words, seems to demand that the executive and the legislature should never be rivals for power. If that be the case, the mind of the public is confusion, and its confusion is destructive of its interest. Nor is that all. Their antagonism means that neither can perform its work effectively; each is continually tempted into regions outside its proper competence. A strong executive either reduces Congress to the level of a formless debating society, or is himself reduced by conflict to the position of an angry, if energetic man, declaiming, like Mr. Wilson in 1919, in a vacuum of futility. A weak executive becomes, almost necessarily, the creature of Congress; and there is never sufficient integration of purpose in the latter to make it a desirable master. The main business, indeed, of a legislature cannot be performed under American conditions. For that business is to find a suitable executive which the opposition can criticize, if occasion offers, to the point of defeat. A body of some four hundred and fifty men, like the House of Representatives, or even ninety-six, like the Senate, cannot hope to interfere successfully with the administrative process. The thing is too complex and delicate for anything more than general oversight. Yet it is to this that, under the given conditions, they are perpetually tempted; and the result is that they merely irritate and hamper where they should criticize to clarify. Nor can such a body legislate if it is able to substitute anyone's proposals for those submitted to it. Chaos is bound to result if the formal

ource of legislation is multiple in character. The executive ceases to be responsible because it does not create; and the legislature disavows responsibility because it does not apply. This has been the result of the American system, and increasingly the result to reconcile its character with the possibility of adequate government.

A word is necessary upon what is the outstanding failure in the American federal scheme—the vice-presidency. Tradition here has utterly undone the original purpose of the Constitution by reducing the Electoral College to a nullity. The result has been that every Vice-president since the Civil War has been selected for reasons even worse, and more obscure, than those for which a President is chosen. No vice-presidential candidate has ever been nominated with a view to his accession to the presidency, though this has occurred on five occasions; and in each instance there has either, as with Andrew Johnson and Roosevelt, been a complete reversal of his predecessor's policy, or, as with Chester Arthur, an attitude of complete uncreativity. The position, indeed, is utterly anomalous; and no experiment, like that of President Harding with Mr. Coolidge, which seeks to keep the Vice-president in touch with policy has had any value. It is bad enough to have presidents nominated systematically by interested wire-pullers; but it is surely worse to have vice-presidents chosen by wire-pullers who are not even interested. Nothing in the working of the Constitution shows more lamentably the little respect of the system for the quality of men.

That is, indeed, throughout its capital defect. Granted the premise of the separation of powers, its formal aspects are logical enough. They are, indeed, politically dubious in the light of historic experience; but, more, they are politically vicious when they operate in the psychological penumbra of Jacksonian democracy. For the essential quality of the system is that it necessarily fails

to elevate the temper of public life. The presidency, of course, is an office as great as any in the gift of a democracy; but the terms of its conferment are, save by accident, fatal to its being occupied by the man who is fit to exercise its powers. To be a member of Congress, even to be a senator, will not often attract the highest talents in the republic, for the simple reason that the separation of powers insulates the senator or representative from reasonable hope of any large and concrete achievement. The best members of the House of Commons go there because it is the highroad to the cabinet, and a seat therein means that they put their hands upon a big machine of which the capacity for influence is enormous. The American legislator lacks almost entirely that prospect; and the American administrator is, on his side, similarly hampered by the knowledge that the machine he is to drive must run along a road largely indicated by others. There is not enough in such an outlook to attract from men of first quality their whole energy of mind throughout their lives. And it is, indeed, noteworthy that since the Civil War, at least, politics has rarely been the permanent vocation of the outstanding figures of American life. As with President Wilson, it has been the end of one career; or, as with Mr. Root and Mr. Hughes, it has been an interlude in another. There is, doubtless, the exceptional instance of Mr. Roosevelt; but it is the general rule that the career of politician as a life-adventure is in America ample enough only to attract the men of routine mediocrity.

And the influence of this, in its turn, upon American social life is notable. The real leadership of America is rarely found in political circles. The influence of politics upon the national consciousness, the part played by them in the mind of the average man, is curiously, even pitifully, small. An American is less instinct with the sense of the state than the citizen of any first-class

European power. He feels less related to, less responsible for, his government. He is cynical about its activities and its personnel in a way to which only long residence in America can habituate a citizen of Europe. It affects notably the political speculation of America; there has not been since the Civil War one political philosopher of first-rate eminence in America. Yet in economics, in metaphysics, in the natural sciences, in jurisprudence, America has been on an equal level with the best of European achievement. It affects also the press. American newspapers give a volume of information to which, perhaps, that of only two European journals can compare. But the comment on that information is, as a general rule, notably inferior to the comment of the European press. For the latter writes always with the knowledge that the effect it produces on public opinion may well unmake a government. The power to produce action of a decisive kind is the great motive-force of the finest journalism. The American journalist has no such power even when the opportunity of a presidential election is counted in its full force. Articles which leave men where they are not likely to be scrutinized with care; and they are, therefore, not likely to be written with care. There exists always a sense of remoteness between the act and the written word which is fatal to the influence the latter might exercise.

It is worth while, perhaps, to illustrate the small part played in American life by the sense of the political adventure by a concrete example. One of the acid tests of a political system is its ability to gain the interest of youth simply because, as a career, it demands a lifetime of service. The observer who visits the universities of Europe will find in them a significant body of students already devoted to a political career. They will find there an active party-life, with its journals, its meetings, its debates. The politicians themselves naturally look to the universities as an essential recruiting ground for their

future colleagues. Yet, save in the presidential year, there is no such vivid political life in an American college. The habit of political debate is hardly existent. The eager disputation, the desire to take an active part in the conflict in the field, the desire consciously to adopt a political career, these are unknown. One cannot meet a body of English trade unionists without finding men to whom a political career is an object of ambition; one would have to search far among the labor-unionists of America to discover one who consciously desired to be a member of Congress. Yet, as Disraeli said, the youth of a nation are the trustees of posterity. The future of any system, the quality it will have, depends, in large degree, upon the interest it can awaken in their minds.

DEMOCRACY AND EFFICIENT GOVERNMENT— LESSONS OF THE WAR³

In the normal times of peace those who believe in democracy as a principle of government have no hesitation in sacrificing some degree of efficiency to secure their ideal. There are definite moral advantages attached to self-government which make efficient government a distinctly secondary object. Law and order must, indeed, be maintained in the state, and certain conditions of public health and convenience secured; but whether these ends shall be attained in the largest measure and with the least possible expenditure of effort and money is less important than the fact that the means taken approve themselves to the citizen body by whom the agencies of government are set up and maintained. The educational value of the public discussion of measures, the training in self-restraint which comes from the necessity of adjusting conflicting views, the sense of the responsibilities of citizenship, are extrinsic benefits which are

³ From article by Charles G. Fenwick, Bryn Mawr College. *American Political Science Review*. 14: 565-86. November, 1920.

regarded as more than counterbalancing the ordinary degree of mismanagement and extravagance which accompany popular government. Under normal conditions, therefore, the problem of the statesman is to obtain as good government as is compatible with self-government.

But in time of war it is clear that a wholly different principle must prevail. The problem is then one of coordinating all the forces of the nation for the single object of providing a more effective fighting machine. The advantages of self-government must then be subordinated to the preservation of the national existence; the delays incident to discussion and debate must be overcome, and a unity of administration must be obtained even at the price of a temporary executive autocracy. For the sake of self-preservation it may be necessary for the state to suspend temporarily those very principles of individual liberty which the war is fought to maintain for the nation as a whole.

The difficulties confronting Great Britain and the United States upon their entrance into the war were due in part to the character of their governmental organization and in part to the individualistic traditions of their peoples. Both countries were obliged to enlarge greatly the executive powers of the government, to assume an unaccustomed control over the individual life of the country, to create an enormous administrative staff, and to impose restrictions upon the free activities of the citizen body. In addition both countries were faced with the problem of creating and equipping new armies for which no provision had been made in advance. As between Great Britain and the United States, the advantage lay with the former in respect to the facility with which its form of government could divest itself of its democratic character and create the unity of control essential to efficiency. The United States found itself with a government whose powers were divided between the national government and the forty-eight governments of the separate states, while in the

national government itself a form of organization prevailed which divided responsibility between the legislative and executive branches of the government. On the other hand the United States had the advantage of observing, while a neutral, the experience of Great Britain in meeting the emergencies created by the war, and was thus enabled to act with far greater promptness and efficiency when its own turn came to mobilize its men and resources for the conflict.

The difficulties confronting the government of the United States at its entrance into the war parallel in almost every case those experienced by the British government. The outstanding difference between the political situation in the two countries was due to the omnipotence of Parliament on the one hand and the strict limitations of a written constitution on the other. Parliament was the maker of the British constitution as well as its instrument of government; and in consequence Parliament could reorganize and enlarge the executive department and could assume whatever powers were necessary to meet the emergency without question as to the constitutionality of its acts; at the same time the unity between the executive and legislative departments prevented friction between Parliament as a legislative body and the cabinet and ministry as its executive committee. In the United States, however, there was the question as to the extent of the war powers of Congress and of the President, there was the division of power between the central government and the member states, and there was the formal separation of the legislative and executive departments of the government.

The first and second of these constitutional difficulties were overcome without marked loss of efficiency, but the lack of unity in the executive and legislative departments proved from beginning to end a serious handicap in the effective prosecution of the war. The dissatisfaction of many of the leaders in Congress with the personnel of the executive department and with its methods

resulted in numerous investigations of boards and bureaus, and in a long-drawn-out contest between the President and Congress as to the means of putting into effect the much needed reorganization of the administrative departments.

The lack of unity was, of course, not wholly due to the system of checks and balances provided for in the Constitution. Legally speaking there was nothing to prevent the closest cooperation between Congress and the President. But as a practical matter the absence of any control by Congress over the President naturally led it to view with suspicion the exercise by him of those comprehensive powers which it had itself conferred upon him. Congress could make appropriations, but it could not control the methods of spending the huge sums of money which it so freely granted. Congress could bring the industries of the country under the direction of the government, but it could not control the agencies set up by the President for the effective execution of the powers granted him. In consequence the criticism in Congress of the conduct of the administration was for the most part destructive rather than constructive, and had the effect rather of discouraging the country with the lack of progress made than of stimulating the executive department to greater efficiency in the prosecution of the war. But making due allowance for the lack of cooperation between the President and Congress due to personal reasons, it remains true that the constitutional separation of the legislative and executive departments resulted in constant friction, in needless delay in the passage of the necessary legislation, and in duplication of activities and extravagance of expenditure which under more critical circumstances might have proved disastrous to the country.

It is a significant feature of a Constitution which in other respects narrowly hedges in the departments of the government that in respect to the conduct of war

it confers comprehensive and unrestricted powers upon the President and upon Congress within their respective spheres. The President is made "commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States." He is thus put in supreme control of the military conduct of the war, and complete unity of military command is secured. The powers of the President as commander-in-chief are, however, limited to the direction of the army and navy, and no new political powers may be assumed by him on the basis of that authority. He may plan campaigns, dispose of the military and naval forces, direct operations, and execute the provisions of military law; but outside that sphere he may not constitutionally act without express warrant of Congress.

In consequence of the lack of confidence of Congress in the efficiency of the conduct of the administration, proposals were made that a new department or ministry of munitions should be created, which should be given complete control over supplies of every kind for the army and navy; but the opposition of the President led to the abandonment of the plan. A more thoroughgoing reorganization, or rather reconstruction, of the executive department was urged by the chairman of the Committee on Military Affairs in the Senate, in the form of a war cabinet, to be composed of three persons who should have the power to coordinate and control the functions of all the executive departments and agencies. The war cabinet would thus have been a small directorate exercising practically unlimited powers of control and leaving to the President only the power to review their decisions. The opposition of the President to such a body was a foregone conclusion, while the constitutionality of the proposed body was at least open to question. As an alternative measure the President requested Senator Overman to introduce a bill which would

permit the coordination and consolidation of the executive bureaus and agencies "in the interest of economy and the more efficient administration of the government." The bill was finally passed on May 4, 1918, and empowered the President to redistribute the functions of the executive agencies and to make transfers both of functions and of personnel from one department to another; but by reason of the long delay in the passage of the bill the President had already resorted to informal methods of coordinating the various bureaus, and no sweeping changes were made as a result of his new powers.

Looking at the long controversy between the President and Congress it cannot be doubted that the system of checks and balances provided for in the Constitution proved a very real source of trouble and was the cause of delays and inefficiency which a unified system of government, under a cabinet responsible to the legislature, might readily have prevented. Cabinet government in Great Britain made mistakes of its own; but at least in point of organization for effective action it had the advantage over the separation of powers by which the Constitution of the United States originally sought to safeguard democratic government.

The internal organization of Congress was responsible for further friction in the operation of the governmental machinery, but less difficulty was found in this case in providing a remedy. Apart from the constitutional obstacle presented by a bicameral legislature, with possibilities of delay resulting from the necessity of reconciling conflicting views of the two Houses, the committee system under which Congress is organized for legislation exhibited several features which were at once undemocratic and inefficient. It so happened that the rule of seniority, by which the chairmen of committees are chosen on the ground of length of service in Con-

gress, in several instances placed at the head of the important committees men who were out of sympathy with the policies of the executive. For example, the chairman of the House Committee on Military Affairs was so far opposed to the plan of raising an army by conscription that it became necessary to call upon the ranking Republican member of the committee, a German by birth, to take charge of the bill. The chairman of the Foreign Relations Committee of the Senate, as well as the chairman of the House Committee on Ways and Means were both strongly opposed to the declaration of war. Under such conditions it could scarcely be expected that prompt action would be taken by the committees in presenting the measures called for by the President and approved even by a majority of Congress itself.

The necessity of reorganizing the relations between the several agencies of the national government has been impressed upon the country even more forcibly since the signing of the armistice than during the actual period of the war. The inefficiency in the conduct of the war resulting from the formal separation of the legislative and executive departments was rendered relatively insignificant in view of the positive accomplishments of the government. The vast contribution made by the United States to the winning of the war makes criticism of incidental confusion and delay seem meaningless now that the crisis is over. But the deadlock in the machinery of government which has come about as a result of the difference of opinion between the President and the majority of the Senate with regard to the ratification of the treaty of peace forms an impressive lesson in the need of a change in the fundamental relations of the legislative and executive departments. The proposal that a constitutional amendment should be adopted providing for the union of the two departments by the establishment of a responsible ministry is doubtless too novel to

the public to be expedient at the present moment. The government of the United States has developed along its present lines too long to be abruptly transformed without serious political upheaval, even if any large body of public opinion could be found to endorse the change.

More moderate proposals in the nature of transitional steps towards complete unity may, however, be advocated. A suggestion recommends that the administration should propose and explain not only the budget but all of its bills openly in Congress and fix a time when they shall be considered and put to vote. The initiative in legislation would thus be transferred to the administration, without, however, taking from Congress its coordinate power to act should the administration fail to do so. The tendency would be for the administration to take over from the committees of Congress the task of framing the bills, while Congress would exercise wider powers of criticism and control.

It is generally agreed that the price of democratic government under present conditions must be a greater or less degree of inefficiency. With the most perfect machinery of government available democracy would still make but halting progress because of its unwillingness to put the necessary restraints upon its own extravagance and because of its choice of leaders who are either mediocre in ability or reluctant to put forward policies which may bring them into disfavor with current public opinion. But accepting these conditions as inevitable, it is still important to inquire whether improvements cannot be made in the existing machinery of government, both to make it more responsive to the will of the majority and to enable it to carry out its desired objects with less friction and duplication of effort. The experience of war-time administration in the United States has pointed the way to a number of readjustments which would give added efficiency to the government without loss of democratic control.

EXECUTIVE OFFICERS IN CONGRESS⁴

Shall officers of the executive department of the federal government be invited to the floor of either House of Congress with the privilege of making oral reply to inquiries addressed to them under rules which would confine the discussions to the subject matter? Those who have had experience as members of the legislative or as officers of the executive branch of the government are probably better qualified to judge of the value of the proposed innovation than those who have not had that advantage. This legislative proposal, however, never having been put into such actual practice as would authorize a definite conclusion, valuable contributions to the discussion of the subject continue to be made from the exclusively academic point of view.

It is, therefore, that President Taft's conclusion in his message to Congress of December 19, 1912, recommending the adoption of legislation which would make it the duty of heads of departments to answer questions in either house, of which they have had due notice, deserves special consideration. Mr. Taft, who, as Secretary of War and as President, had the best of opportunities to judge from the executive point of view, ends his recommendation as follows:

The enactment of such a law would be quite within the power of Congress without constitutional amendment, and it has such possibilities of usefulness that we might well make that experiment, and if we are disappointed, the misstep can be easily retracted by a repeal of the enabling legislation.

The law organizing the treasury may be accepted as the solution of this question. The head of that department can now, at any time either house may see fit to take action under the existing law, be required to give

⁴ From article by Perry Belmont, A.B., Harvard; LL.B. Columbia; former chairman, Committee on Foreign Affairs, United States House of Representatives. *Constitutional Review*. 12:133-47. July, 1928.

information in person, although he must await an invitation from Congress.

Congress, in creating the office of Secretary of the Treasury, declared that he "shall make report and give information to either branch of the legislature either in person or in writing," as either house may require, "respecting all matters which shall appertain to his office." In dealing with that department the theory of legislation differed from that in regard to any of the others. The Secretary of the Treasury is not directed by Congress to conduct the business of the department in such manner "as the President shall from time to time direct," but after enumerating certain specified things which the head of the treasury must do he is required "generally to perform all such service relative to the finances as he shall be directed to perform" without specifying by whose direction.

From the time of establishment of his office, the Secretary of the Treasury should never have been regarded as merely a member of what is known as the President's official family. The Constitution provides that "all bills for raising revenue shall originate in the House of Representatives." That is the special reason which has given to Congress the authority under law establishing his office, which remains unamended in its original form, to require (the word "require," not "request," is used) the Secretary of the Treasury to deliver to Congress from time to time in person and orally whatever information may be in possession of the department. This does not mean that Congress can compel the secretary to disclose an opinion which the President may entertain in respect to tariff or other financial legislation, and which he is unprepared to himself formally communicate to Congress. From the head of the treasury Congress may compel information in regard to everything else appertaining to his department.

It is obvious that this cabinet officer especially should

be required to appear before Congress, and had the law establishing his office been observed, our tariff and currency legislation would have been made clearer to the country and more satisfactory results secured.

It is not necessary that the heads of departments should be orators, as the critics of this proposal would imply. The intimate friends and admirers of the present Secretary of the Treasury did not suppose that he would appear before the Senate or the House committees, as he had little experience of that nature. It turned out, however, that not only has he appeared before congressional committees, but he has been able to state with clearness whatever information it became necessary for him to communicate in person. Had the secretary himself been unable to do so, the under-secretary of the treasury, having had the experience of debate as a member of Congress, could, had it been necessary, have represented the Treasury Department. The same conditions would always prevail in every department. Men who understand their subject make themselves understood, and that is all Congress requires of executive officers.

Congress, which made the Treasury Department amenable to its jurisdiction, can claim similar powers over the other executive departments. The annual written reports of the secretaries, excepting that of the Secretary of the Treasury, are, in general, addressed to the President and he may or may not, as he chooses, communicate them to Congress, although the custom is for him to send such reports with his annual message. Essential as these reports are for the purpose of legislation and to a proper understanding of the requirements of each department, they invariably need further explanation, which no one should be able to give as well as the head of the department himself, or the chief of the bureau having the special subject in charge. It is conceded that much information which can safely for the

public interest be given in the private session of a committee, might not be proper for the public session of the whole House. Resolutions of inquiry, especially those addressed to the State Department, are often accompanied with the words, "if not incompatible with the public interests," meaning that it remains in the discretion of the head of the department whether or not to make public such information. This principle would necessarily prevail in regard to the personal appearance of any of the heads of departments.

The President has constitutional authority to make treaties and appoint ambassadors and ministers with the consent of the Senate. The Secretary of State is not required by the law creating his office to report or give information to either branch of the legislature. Whatever is said with regard to foreign affairs is usually communicated directly by the President in his annual message. As to matters relating to the Department of State there is no reason preventing Congress from exercising the same power which is established in the law organizing the treasury. To the executive is given the power to carry out in secret certain measures of foreign policy. Yet if Congress should invite the Secretary of State to the floor, even in regard to such matters, information, which in his opinion should be made known, could in this way be communicated, and with great benefit to the country, to the administration and to Congress.

The proposed plan for open and public intercourse would in no way interfere with the continuance of committee work. Yet it has often happened that secret methods of the committee are undesirable and that there ought to be publicity of executive details. Such publicity is frequently even necessary to the purpose of an administration or as an explanation of its policy. Official reports of the proceedings, or hearings as they are called, before committees are therefore published. It is impossible for the membership of either House to give

more than partial or scant attention to them. They have special work to perform in the different committees to which they are assigned, and if they give the rest of their time to taking part in what actually goes on in the deliberative assemblies, no more can reasonably be asked of them.

THE LEGISLATIVE POINT OF VIEW

Men of great ability and of experience in legislative leadership differ as to the probable effect of the proposal. Such was the case as between Mr. Morrill, of Vermont, and Mr. Garfield, of Ohio, both of whom took part in the debate when the proposal was first brought before the federal Congress. One of the grounds of Mr. Morrill's opposition was that it would aggrandize the authority of the President. This opinion is shared by the present Democratic leader in the Senate, Mr. Robinson of Arkansas. In a powerful address to the American Bar Association he presented his views upon the subject with his usual ability. He based his opposition to the proposition chiefly upon the idea that it would increase the power of the executive. Mr. Robinson thought that Congress would be subjected to executive influence and that it would create the subordination of the legislative mind to the executive will, or else that a hopeless and irreconcilable conflict between the two would result. Mr. Garfield, on the contrary, as does the writer, held the belief that it would restore the desirable equilibrium between the executive and legislative departments of the government.

In 1864 a bill to permit the heads of the executive department to occupy seats on the floor of the House of Representatives was reported from a select committee by Mr. Pendleton of Ohio. Amendments to the rules of the House accompanied the report which would have removed the existing restrictions upon communication between the executive and legislative branches.

The urgency of the Civil War rendered it difficult to secure attention to the subject, though the debate revealed strong support for the measure by Mr. Garfield, by Mr. Blaine, afterwards Speaker of the House, Secretary of State and candidate of his party for President, and by Mr. Ganson of New York.

It may be assumed that this innovation was suggested by the provision contained in the laws of the Confederate States. The confederate government was in embryo and it was believed by its framers that good results might be obtained by establishing such intercourse between the executive and legislative departments. Accordingly, in the confederate constitution after the words "and no person holding any office under the Confederate States shall be a member of either House during his continuance in office" (the identical provision of the federal Constitution upon which it was modelled), the following clause was introduced: "but Congress may by law grant to the principal officers in each of the executive departments a seat upon the floor of either House with the privilege of discussing any measures appertaining to his department." It was wisely determined that, in forming a new government, no better instrument could be framed than that under which they had themselves experienced the advantages of representative government. They established the executive departments in precisely the same manner as under our own system. The innovation was undoubtedly considered an improvement, based upon long experience of the disadvantages of a lack of sufficient oral intercourse between the two law-making branches of the government, but there are no records available which would indicate its value in practice. The conditions created by the Civil War prevented the complete adoption of the plan.

The presence on the floor of Congress of executive officers to impart direct information orally as is already done with increasing frequency in the committee rooms

of the Senate and of the House is not suggested by the parliamentary systems of other governments.⁵ Those systems differ fundamentally from ours, which is not the parliamentary system, and they are not safe guides for us, nor do we desire such a system. It is therefore important to bear in mind that the suggestion has its origin in the development of our own laws and must be discussed within its capacity of adjustment to our American system.

The proposed plan provides through a mere change in the rules of procedure, for the presence in Congress of the heads of the executive departments, all of whom have been created by Congress, and to whom new duties can therefore be assigned.

No encroachments by the legislative branch upon the constitutional privileges of the President, or of his advisers, who are called members of the cabinet, is suggested, and no invasion by the executive of the jurisdiction of the legislative branch. No modification of the constitutional distribution and separation of the functions of the three departments of our government, its distinctive and characteristic feature, is proposed. Nor would such a change in the rules of procedure interfere with the existing methods of communication, by written reports or by the personal presence before congressional committees of the heads of departments and of the subordinate chiefs of bureaus of the executive departments.

The difference between our Constitution and that of Great Britain could not be more clearly pointed out than

⁵ Until about twenty-five years ago the appearances of heads of departments before committees of the House or Senate were rare occurrences generally noticed and commented upon. At that time they began to be more frequent, though confined to but few committees. The practice grew with the increasing requirements for direct oral information, and now almost every committee of the Senate and of the House receives information directly from the head or from the subordinates of the departments having jurisdiction over subjects which concern the corresponding legislative committees. The number of executive departments has increased as have the number of committees, and this form of intercourse, direct and personal, is already established, and but few doubt its necessity or efficacy.

by Lord Birkenhead in his address to the American Bar Association at Minneapolis in August, 1923, on "The Development of the British Constitution," when he said:

No service is rendered to Anglo-American relations by exaggerating the debt which you owe either to our Constitution or to our jurisprudence. The framers of the American Constitution produced something which was original and which purchased certain acknowledged advantages at the cost of certain hardly disputable disadvantages. These observations are not intended to suggest that the genius of the framers of the American Constitution has not been justified by the years that have supervened. They are intended rather to make it plain without establishing comparative valuations, how profoundly their conceptions differ from the British conception of constitutional evolution. . . For herein lies the fundamental difference between your Constitution and ours. Your Constitution is expressed and defined in documents which can be pronounced upon by the Supreme Court. In this sense your judges are the masters of your executive. Your Constitution is a cast-iron document. This circumstance provides a breakwater of enormous value against ill considered and revolutionary changes. Whether, if the forces behind revolutionary change become menacing and strong enough the breakwater will serve, must be left for the future to determine. But an outsider must fully and absolutely admit that, up to the present, its strength has seemed extremely adequate. . . Thus it happens that practically no law in Great Britain is constitutional in the sense in which you have a constitution. Any law in Great Britain can be altered by any Parliament and no court may challenge the constitutional force of any acts of Parliament.

Lord Birkenhead was careful not to express a preference for our Constitution over that of his country's. Nevertheless he pointed out with his usual clearness the greater security and stability under our system as compared with that of Great Britain's.

Notwithstanding the wide difference between our national legislature and all parliamentary bodies, the opponents of the proposition that the heads of our departments should appear on the floor of Congress often assume that its advocates wish to establish imitations of the parliamentary systems of England or of the governments of continental Europe or of Canada or of the South American states. In the early and very able

debate in the House of Representatives in January, 1865, upon the report of the select committee to which the subject had been referred, such was the assumption of Mr. Cox of Ohio.

His colleague from Ohio, Mr. Garfield, afterwards elected President, began his able and exhaustive argument by saying:

I know how difficult it is to get the attention of members, when they have just attended a place of amusement, to the consideration of a grave measure. . .

He called the attention of the House to the fact (a similar statement might be made today) that

Our table is groaning under the weight of resolutions asking information from the several departments that have not been answered. Who does not remember that on a very early day of the session a resolution introduced by a member from Indiana (Mr. Holman) was unanimously adopted asking for *executive information*, and after four or five weeks had elapsed another resolution was adopted asking why the order of the House had been neglected and we had not been furnished with the information? But this also has fallen a brutum fulmen; we have received no answer. Could these things be if the members of the legislative and executive departments were sitting in council together? Should we not long ago have had the information or known the reason why we did not have it?

We want information more in detail than we can get it by the present mode. For example, it would have aided many of us a few days since, when the loan bill was under consideration, if the Secretary of the Treasury had been here to tell us precisely what he intended in regard to an increase of the volume of the currency under the provisions of the bill. We want to understand each other thoroughly, and when this is done it will remove a large share of the burdens of legislation.

I am surprised that both the gentleman from Vermont (Mr. Morrill) and the gentleman from Ohio (Mr. Cox) declare that this measure would aggrandize the executive authority. I must say that, to me, it is one objection to this plan that it may have exactly the opposite effect.

Who does not know that the enactment of this law will tend to bring our ablest men into the cabinet of the republic? Who does not know that if a man is to be responsible for his executive acts, and also be able to tell why he proposes new measures, and to comprehend intelligently the whole scope of his duties, weak men will shrink from taking such places? Who does not know that it will call out the best talent of the land, both executive and parliamentary? . . . I venture to assert

that the mass of our executive information comes from the heads of bureaus, or perhaps from the chief clerks of bureaus, or other subordinates unknown to the legislative body. I would have it then when these men bring information before us, they shall themselves be possessed of the last items of that information, so that they can explain them as fully as the chairman of the Committee of Ways and Means ever explains his measures when he offers them before us.

Instead of seeing the picture which the gentleman from Ohio (Mr. Cox) has painted to attract our minds from the subject-matter itself to the mere gaudiness of his farcical display, I would see in its place the executive heads of the government giving information to and consulting with the representatives of the people in an open and undisguised way. The danger to American liberty is not from open contact with departments, but from that unseen, intangible influence which characterizes courts, crowns, and cabinets. Who does not know how completely the reasons of a member may be stultified by someone getting up and reading a dictum of some head of department that he thinks a measure good or bad, wise or unwise? I want that head of department to tell me why; I want him to appeal to my reason, and not lecture me *ex cathedra* and desire me to follow his lead just because he leads. It is the silent, secret influence that saps and undermines the fabric of republics, and not the open appeal, the collision between intellects, the array of facts.

I hope that this measure will be fairly considered. If it does not pass now, the day will come, I believe, when it will pass. When that day comes, I expect to see a higher type of American statesmanship, not only in the cabinet, but in the legislative halls.

THE EXECUTIVE POINT OF VIEW

Mr. Garfield's arguments are reinforced by the message of President Taft communicated to Congress on December 19, 1912:

I recommend the adoption of legislation which shall make it the duty of heads of departments—the members of the President's cabinet—at convenient times to attend the session of the House and the Senate, which shall provide seats for them in each House, and give them the opportunity to take part in all discussions and to answer questions of which they have had due notice. The rigid holding apart of the executive and the legislative branches of this government has not worked for the great advantage of either. There has been much lost motion in the machinery, due to the lack of cooperation and interchange of views face to face between the representatives of the executive and the members of the two leg-

islative branches of the government. It was never intended that they should be separated in the sense of not being in constant effective touch and relationship to each other. The legislative and the executive each performs its own appropriate function, but these functions must be coordinated. Time and time again debates have arisen in each House upon issues which the information of a particular department head would have enabled him, if present, to end at once by a simple explanation or statement. Time and time again a forceful and earnest presentation of facts and arguments by the representative of the executive whose duty it is to enforce the law would have brought about a useful reform by amendment, which in the absence of such a statement has failed of passage. I do not think I am mistaken in saying that the presence of the members of the cabinet on the floor of each house would greatly contribute to the enactment of beneficial legislation. Nor would this in any degree deprive either the legislative or the executive of the independence which separation of the two branches has been intended to promote. It would facilitate their cooperation in the public interest.

On the other hand, I am sure that the necessity and duty imposed upon department heads of appearing in each House and in answer to searching questions, of rendering upon their feet an account of what they have done, or what has been done by the administration, will spur each member of the cabinet to closer attention to the details of his department, to greater familiarity with its needs, and to greater care to avoid the just criticism, which the answers brought out in questions put and discussions arising between the members of either House and the members of the cabinet may properly evoke. The enactment of such a law would be quite within the power of Congress without constitutional amendment, and it has such possibilities of usefulness that we might well make the experiment, and if we are disappointed the misstep can be easily retraced by a repeal of the enabling legislation.

No stronger argument could be made than Mr. Taft's speech at the Lotos Club in New York, November 16, 1912:

I doubt not that the presence of able cabinet officers on the floor of each House would give greater harmony of plan for the conduct of public business in both Houses, and would secure a much more valuable legislation in accordance with party plans than we have now. On the other hand, the system would enable Congress to come closer to the executive and more effectively obtain information as to each act, and compel a disclosure for the reasons justifying it, immediately at the time of the act, and keep the public more quickly advised by the direct questions of hostile critics which must be answered, of the progress of business under executive auspices.

He added :

It would necessitate the appointing to the cabinet of men used to debate and to defend their position, and it would offer an opportunity for the public to judge of the executive and his administration much more justly and much more quickly than under our present system.

Mr. Wilson was among those who, having previously advocated the proposition, demonstrated, by his frequent appearances before Congress, as President, his conviction that direct communication between the executive and legislative branches is necessary. Such appearances of the executive, while of value, constitute arguments in favor of the presence of the heads of the departments rather than of the chief executive himself. Only on the rarest occasions should it be considered advisable for the President to address Congress in person. Under the Constitution he cannot and should not be subjected to interrogatories; nor should he be expected to impart detailed information necessary to legislators.

The committees before which the heads of departments at present appear most frequently are the Finance Committee of the Senate, the Ways and Means of the House and the Military and Naval Committees of both Houses. If ever this almost constant practice of a more intimate intercourse between the two branches of the government, through committees, should finally extend to the floor of either House, it would be owing to the evolution of the increasing necessity for official authoritative information. The jealousy of the legislative branch which naturally permeates that body, in regard to any supposed encroachment of the executive authority, will always retard such a movement. There is also a feeling, but less prevalent than formerly, on the part of the executive department, that the head of a department would be exposed to irrelevant interrogatories and undesirable situations. There is little reason to suppose that anything of the kind would occur. Those who have

the parliamentary systems in mind should be made to realize that in parliamentary bodies the government or cabinet are practically committees of the legislature. They are members of that body. When they submit to interrogatories, it is expected that the opposition will resort to any means within reason to create difficulties for the government and endeavor to bring about its fall. Under our congressional system this could not be done.

The recent appearance of the Secretary of the Navy before the House was most creditable to him. After the presentation of the department's point of view to the Committees on Naval Affairs of the Senate and of the House, it was but a natural desire on the secretary's part that something more be done, in an endeavor to make known the exact situation directly to the whole body of Congress. That not being possible under the present regulations, he evidently believed that his official knowledge of the needs of the department might be useful, during the discussion of the navy bill and therefore attended the session of the House, although compelled to remain a silent auditor.

The touchiness, which exists and may even be termed commendable in regard to the privileges of the legislative branch, found voice in some members whose unfamiliarity with the history of this subject caused them to be unnecessarily disturbed, and, though from a southern state, ignored the fact that the confederate government had provided for such a situation. House leaders of the minority, Mr. Oldfield and others, have expressed to the writer their regret that they were not present at the time the incident occurred, and they have assured him that they certainly would have taken occasion to make known to the secretary himself and to the country that the dignity of the House and its good manners are always maintained by its controlling influences. Mr. Oldfield's long service in the House gives

much weight to his opinion that the head of a department, by his presence on the floor of Congress, is better able to judge the attitude of the legislative branch than is possible by the mere reading of debates. Representative Cooper of Wisconsin, elected to the 53rd Congress and whose long service was rewarded by his reelection without opposition to the present, the 70th Congress, also believes in the advantage of closer contact between the executive and legislative branches.

Our Congress, fortunately, is not a parliamentary body. What it seeks from the executive branch is information, not ordinary information, but expert, detailed, official information such as lawyers and lawmakers require in formulating legislative enactments. Bills have been introduced in both Houses at almost every session, providing for the proposed innovation, in recent years regularly by Representative Montague of Virginia, formerly governor of that state, Senator McLean of Connecticut, and others, and little seems to have been done. The fact is that members of both Houses are occupied with legislative duties, local and national, pressing upon them in such manner that time is lacking for an exclusive devotion to an endeavor to secure a change in the method of procedure, which would be necessary for its accomplishment, but would be a serious interference with the performance of such duties. There need be no surprise that the movement is slow.

The experience of the writer may be of some value in carrying conviction as to the accuracy of this statement. Two years before he entered Congress he delivered an address in Cincinnati upon this subject. During the eight years of his service, representing the First Congressional District of New York, consisting at that time of the Counties of Suffolk, Queens and Richmond, a large part of which is now included in Greater New York, and as a member of the Foreign Affairs Committee of the House and as its chairman, while he held

to his belief in the great advantages of the change of procedure referred to, he had quite enough to engage his exclusive attention. Nevertheless, during the four years under a Republican administration and the four years of a Democratic administration, he was in constant personal contact with the Secretary of State, in each instance. He could not have accomplished what was done during the period of his service had that close relation not have been maintained.

One incident may be cited. The discussion with Great Britain over the Canadian fisheries had long been a source of embarrassment and irritation. The representations of our government were received by the British Foreign Office as if the question of the Canadian fisheries was a local one, chiefly interesting New England and especially the Gloucester fishermen. Lord Roseberry was then at the head of the Foreign Office. He had been in this country as a young man and conceived the idea that such was the case. It became necessary to impress the British Foreign Office that, on the contrary, our government considered the question of national importance. The State Department therefore placed in the hands of the writer a joint resolution giving to the President the discretionary power to close our ports to Canadian fishermen, if, in his opinion, the situation should justify such a drastic measure.

The Committee on Foreign Affairs, while understanding that the resolution originated in the manner indicated and that the State Department desired its prompt adoption, was naturally inclined to move slowly. The writer, then, in accordance with his belief in the value of personal contact, went to Mr. Cleveland and asked him to receive the committee at the White House. This was done and in less than ten minutes of conversation, with the members of the committee seated around him, the President made it clear that such a joint resolution would be of service, and the resolution

was passed. The British Foreign Office realized the full importance of the question, Mr. Chamberlain came to Washington and a *modus vivendi* was arranged between the two governments. Since that day, the question has been practically settled to the satisfaction of both governments.

FROM BOTH THE LEGISLATIVE AND EXECUTIVE POINT OF VIEW

The legislative experience of former and present members of the House and Senate is of great value in the discussion of this question. Chief Justice Taft's important contribution to the subject when, as President, he transmitted the message already cited, and the strong argument of Mr. Hughes, former Secretary of State and Justice of the Supreme Court, in favor of the proposition, treat the matter from the point of view of the executive branch of the government. There are those distinguished in the public service, who favor the innovation, and who have had experience both in the legislative and in the executive departments. Mr. Root is one. He has been a member of the United States Senate, Secretary of War and Secretary of State. In view of the present article he has stated to the writer:

I have long been of the opinion that it would improve the conduct both of the legislative and executive business of the government to have the heads of the executive departments entitled to seats in the Houses of Congress, with the right to be heard and the duty to give information, under appropriate regulations.

Mr. Davis, formerly a member of the Judiciary Committee of the House and solicitor general in the Wilson administration (Democratic candidate for the presidency), also favors the proposition, which he says, as do all who advocate it, requires or contemplates no amendment of the Constitution.

Upon such authority there should remain little doubt as to the advantage to the legislative and executive business of the government. But there is another aspect of the subject well worth considering. The Constitution declares that "the executive power shall be vested in the President of the United States" and for the purpose of aiding him in the discharge of that duty he may "require the opinion in writing of the principal officer in each of the executive departments upon any subject appertaining to the duties of their respective offices." Nothing can be taken from the constitutional power of the executive. The bringing into relief the heads of the departments in their relation to the able men the country possesses in its national legislature will not, because it cannot, diminish the constitutional authority of the chief executive, but a better relation between the two branches and a better understanding throughout the country of that relation would be established.

The development of absolute and discretionary power in our chief executive has been an uninterrupted growth. So accustomed has our country become to the exercise of powers of control by executive orders and departmental rulings, that political parties are expected, every four years, to endeavor to provide presidential candidates who are supposed to become rulers. The idea is often cultivated that they are to be invested with an authority over which scarcely a restraint on the part of Congress, the coordinate branch of the government, should be exercised. It is not a result accomplished through usurpation of arbitrary power by any of our presidents, nor has it been brought about by general consent expressed in amendment of the Constitution. The enormous development of national wealth and industrial energy have created a collective pressure of local interests, represented in an overwhelming mass of legislative measures, general and special, forced upon the

attention of Congress. The resulting subordination by Congress of national and external, or especially of foreign policies, to the exigencies of internal or domestic policy, has accompanied the centralization of power, as if by a law of gravitation, in the federal government. It has had the effect of largely diverting to the executive department the consideration of national policies.

It is not idle, popular curiosity which requires of the press the most detailed and minute description of the personal characteristics of a presidential candidate. It is the man himself, his mental and moral qualifications for personal government, and not so much his political opinions and associations that are considered of importance. The interest in the personality of an elected President is intense and even pathetic. Owing to the unerring instinct of the American people, telling them that, in some way, he has been invested by them with authority to rule over them during four or eight years, they believe that the future of the country may be favorably or unfavorably affected by him. Having elected him to the chief magistracy, it is a patriotic impulse which leads the great majority to attribute to him all the qualifications that should be required of a ruler possessing discretionary power. In order that he may be given full opportunity to serve his country, there is a general disinclination to criticise the President's exercise of the powers temporarily entrusted to him, which of itself greatly magnifies them. Such an accumulation of unrestrained executive authority might become a more serious menace than it is but for the fact that it is held during a limited period only; but the temptations offered to an ambitious President to succeed himself, may obviously involve harmful consequences to the country.

The never-failing common-sense of the American people may be counted upon to eventually dispel the fictions and exaggeration surrounding the presidential office, to establish a clearer point of view with regard to

its functions, and a more normal relation between the legislative and executive departments of their government. Too much is expected of our President, from the moment he undertakes the duties of his office. The impossible is required of him. The impossible is attributed to him.

The mighty searchlight of the press is constantly turned upon him, leaving the legislative branch in comparative obscurity. He appears far and near, across the national horizon, in enlarged proportions. He would be more than human did he not lend himself, more or less, to the illusions which so strengthen him in the popular imagination.

There is no legislative body in the world containing men of higher qualifications of ability and character for legislative and executive office, including the presidency, than are found in our Senate and House of Representatives. To have served with distinction many years in Congress greatly adds to the important qualifications for that great office.

The majority are men of good standing in their respective states and congressional districts. While this is true with regard to its individual membership, the collective membership of Congress is comparatively unknown to the country. It is the habit to decry the *Congressional Record*, and although, as in the legislative journals of all other countries, features appear now and then that are open to criticism, speeches are delivered upon the floor of our Senate and House of Representatives of the highest order of merit. Our congressional debates contain contributions of the greatest value, possessing a wealth of research and power of presentation which are more liable to excite the admiration of the representatives of foreign governments at the national capitol who, in the course of their duties, are called upon to read them, than of our own people. The reason of this is that we all feel it is a laborious and apparently useless task to follow the debates in Congress under

present conditions. A complete change of attitude on the part of the public and consequently of the press would undoubtedly be brought about, if the intercourse between the legislative and executive branches of the government were open, direct and more responsible to public opinion.

A discussion on the floor of either house between the leaders of the legislative branch and the heads of departments would receive the full attention of the country and would go far toward restoring the equilibrium with its checks and balances that should exist between the two great coordinate branches of the government of the United States.

NEGATIVE DISCUSSION

BALANCE OF POWER IN WASHINGTON¹

The main contention in the articles referred to is that responsible leadership must be set up in Washington. The immediate suggestion to this end is that members of the cabinet and legislators should be brought face to face on the floor of Congress for the transaction of joint business. It is represented that the chief source of legislative evil is the lack of responsible contact between the legislature and the executive. Incidentally, it is asserted that the power of Congress is declining, that it has fallen from its first estate of dignity, that the power of the President has become predominant, that there has been developed a spasmodic dictatorship, and, finally, that there is a consensus of opinion as to what should be done. Much of the discussion centers around the budget and the unsatisfactory results which are attributed to lack of leadership and unity.

It is very easy to draw an indictment, not only of the Congress, but also of the relation existing between the Congress and the executive. In fact, it is easy to draw an indictment of our entire form of government. It has frequently been drawn. It is usually easier to criticize than it is to defend or to construct.

It is charged that it takes too long to get an expression of the nation's will on important matters. Why did it take nearly three years to get a peace with Germany? Why has the matter of our attitude toward the

¹ From article by David F. Houston, ex-Secretary of Agriculture and of the Treasury. In reply to articles by Chester H. Rowell in the *World's Work*. December 1924 to March 1925. *World's Work*. 50: 187-94. June, 1925.

League of Nations been so long in debate? On these matters other nations quickly formed their decision and took their stand. Why did it take so many years to get tax legislation? Why has the policy of protection been in question for over a hundred years? Why is it that it requires so much time for the will of the American people to get itself expressed? Who can say what the will of the American people is on a number of great public issues?

Why do we, who claim to be the most democratic people in the world, place so many restrictions on the expression of our will? Why do we almost alone among the nations preserve a system of checks and balances? Why is it that representatives elected in November do not take their seats until the fourth of March following at the earliest, and not until thirteen months after election in case no special session is called? Why has the Senate a complete check on the House? Why has the executive a veto on the action of both? And why should the Supreme Court have power to declare what the Congress says is law to be no law?

No such checks exist in any other great constitutional country. Even Canada operates under a system in which the popularly elected Dominion assembly is dominant, both in legislative and in executive matters. And all but two of her provinces proceed in ordinary fashion with a single legislative body, popularly elected, governing the state through their committees and cabinets.

It is charged that there is too much friction between the legislative and the executive branches and too much consequent waste and inefficiency. Why, during the war, was it solemnly proposed to create a congressional committee on the conduct of the war? Why, during the war and immediately thereafter, were there created about ninety congressional committees to find out what had happened? Why does Congress persist in hampering heads of departments by numerous, narrow, statu-

tory restrictions? Why does it set up committees, such as those on printing and space, with power to administer law in relation to publications and working quarters? Why is it that on important matters the executive attempts to go in one direction and Congress insists on going in another?

Obviously, the government has faults. Obviously, it is not a logically perfect scheme and its parts do not operate with the perfection of a highly sensitive and delicate piece of well-oiled machinery. I recognize the faults; but I question the soundness of the chief representations made by Mr. Rowell. I dissent from his conclusion and am opposed to his remedy.

I do not believe that Congress has lost its position as a predominant force in the government, or that the President has become the predominant force. I do not believe that it was intended that either should be predominant, or that either can become predominant, or should be permitted to do so. I do believe, however, that in the long run, if there is a tendency in either direction, it will be for the Congress more and more to become the controlling factor. Nor do I believe that the chief source of legislative evil is the lack of responsible contact between the executive and the legislative branches. I question whether there is a consensus of opinion as to what should be done. And I feel reasonably certain that when the matter is debated to a conclusion it will not be decided that bringing the members of the cabinet face to face in Congress for the purpose of discussion would accomplish anything of importance or would be regarded as desirable.

At present, heads of departments are accorded every opportunity through reports, through appearance before committees of Congress, and through frequent contacts with leaders, to present all matters or measures of consequence demanding congressional action. They are always given courteous and full hearing and consideration.

Such of their subordinates as they desire to have appear before committees of Congress are also accorded the fullest consideration and attention. In such manner, the cabinet is in position to educate not only large numbers of members of Congress but also the leaders in their respective fields who, by reason of full membership and constitutional standing in the Congress, will in the nature of things be given a more sympathetic hearing than would an executive officer who is not a full and regular member of either House.

There is, as a matter of fact, vastly more executive and legislative contact than the public generally is accustomed to believe. When the same party is in control of both branches—and if it is not, there will be confusion under any set of conditions—if a cabinet officer knows his business it is possible to secure cooperation in the framing of legislative measures and the execution of a program. This has been demonstrated over and over again. When measures so framed and programs so outlined come up before Congress for debate and determination, it seems reasonably clear that the handling of such matters by regular congressional members, occupying positions of responsibility on terms normally of good fellowship even with their opponents, would be more effective than similar action by heads of departments, for whom the Congress is in no wise responsible and to whom there would be much jealousy.

It seems to me as certain as anything can be that placing the cabinet in Congress would not result in responsible leadership. Neither House of Congress will take its leadership from men brought in from the outside, men whom it does not select. Nor, in the long run, even if the President's party control both Houses, will Congress tolerate obvious efforts of the President directly to lead it. And especially will it resent attempts of the President to force its hand by appeals over its head to the people. It will not tamely submit to the intimation that it does not represent the people. It has

finally broken every President who aggressively persisted in attempts either directly or indirectly to lead it and it will continue to do so in the future.

Cabinet members merely with the status suggested would be in an embarrassing position. They would resemble more than anything else the traditional bumps on logs. They would be a target for heckling. Furthermore, members of the cabinet, selected as heretofore presumably for administrative fitness or because of their commanding position before the public, would not necessarily be particularly qualified to participate in congressional debates or to assume legislative leadership. It would immediately become incumbent on the President in selecting his heads of departments to consider men more from the point of view of skill in parliamentary discussion and legislative leadership than from that of their qualities as administrators.

It is seldom that the same man unites in high degree both the requisite qualifications; and it is a matter of common knowledge that many of the most competent administrative heads have not had aptitude for parliamentary business. It is also a matter of common knowledge that men who have ranked high among congressional leaders and who have been given cabinet appointments have not demonstrated fitness for administrative positions. It is also obvious that if members of the cabinet were accorded the privilege of taking full part in the transaction of congressional business they would have little or no time for the supervision of the departments under their charge.

If we are to take any step at all in this direction with a hope of accomplishing beneficent reforms and securing large results, we must, it seems to me, go the entire distance. We cannot eat our cake and have it too. We cannot retain the benefits of our plan of the separation of powers and at the same time secure in measurable degree the advantages of a parliamentary or responsible system of government. The question then arises whether

we should go the entire distance. This matter is one which I have given thought for many years. At one time I entertained the view that we should. I prepared what seemed to me to be a convincing statement of the necessity of doing so. Recently I set out to revise the statement with a view to see if I could improve it and I succeeded in convincing myself that I was mistaken. This, if it proves nothing more, may prove that I have been open-minded about the matter.

Such a change would be revolutionary. It would mean a complete overthrow of our present scheme of government. To operate in its perfection the parliamentary system would have to be adopted to its entirety. Briefly stated, this would mean: that the House of Representatives would become the dominant factor in our federal government, both in legislation and in administration; that the administration would be directed by a committee responsible mainly to the House of Representatives; that the Senate would lose, at least in part, its position as a coordinate body, just as has the House of Lords in Great Britain; that the President would become a formal executive, that is, in large measure, a figure-head, losing his veto power; that the Supreme Court would lose its power to declare laws unconstitutional; that there would be elections not at stated intervals but whenever the government seemed to lose the confidence of the country; and therefore that our Constitution would cease to exist except as a variable and shifting element, its character to be determined in each instance by the will of the dominant body.

This is the picture of the only government in the world where it can be said that the parliamentary system exists in its full, that is, in Great Britain. There the House of Commons is dominant. It governs through the cabinet, in effect selected by the House. The House of Lords will not stand in the way of the House of Commons when the opinion prevails that the nation is behind the Commons.

The rule is that the House of Lords must in matters of legislation, especially in financial matters, give way to the House of Commons. The king has no real executive functions. He is only the head of the dignified part of the constitution. The real executive head is the prime minister, and the king has little option as to whom he shall ask to take the premiership. He must send for the man, no matter how distasteful, who can lead the majority in the House of Commons and, ultimately, the nation. He has vetoed no measure of importance for generations and could not do so. And, as is well known, the British courts have no power to interfere with the measure passed by Parliament. They can only interpret the law.

It is claimed that this arrangement makes it easier for the will of the people to find expression. This, theoretically and logically, is true. In this respect, taking as a test of democracy the ease with which the will of the people can break through machinery and find expression, the English arrangement is more democratic than ours. It is claimed also that it leads to the presence and continuance in public life of abler men, promotes leadership, enables the people of the nation to have presented to them in more influential manner the pressing important problems, and that it is conducive to popular education.

That there is something in these contentions admits of little doubt. But that things are as they are in Great Britain solely because of the machinery called the responsible ministry or of the body of understandings supporting it, or that things would be here as they are in Great Britain, or on the whole that there would be marked improvements, I do not believe.

Those who take the opposite view seem to me to overlook more essential factors and overrate the value of machinery itself. They seem to me to attribute certain faults here to machinery whose explanation lies in other directions and to ascribe merits to machinery in

Great Britain which are due to things deep down in the historical and social structure behind the frame of government. It has come to pass in this country that there is an inclination to place undue reliance on legislation and on machinery, and this warning uttered by Boutmy, the French publicist, to his countrymen, may well be heeded by us:

Constitutional mechanism has no value and efficiency in itself, independently of the moral and social forces which support it or put it in motion.

Bryce, in similar vein, years ago, had this to say:

All governments are faulty; and an equally minute analysis of the constitution of England, or France, or Germany, would disclose mischiefs as serious, relatively to the problems with which those states have to deal, as those we have noted in the American system. To any one familiar with the practical working of free governments it is a standing wonder that they work at all. What keeps a free government going is the good sense and patriotism of the people, or of the guiding class, embodied in usages and traditions which it is hard to describe, but which find, in moments of difficulty, remedies for the inevitable faults of the system. Now, this good sense and that power of subordinating sectional to national interests which we call patriotism, exist in higher measure in America than in any of the great states of Europe. And the United States, more than any other country, are governed by public opinion, that is to say, by the general sentiment of the mass of the nation, which all the organs of the national government and of the state governments look to and obey.

Again he says:

The English Constitution, which we admire as a masterpiece of delicate equipoises and complicated mechanism, would anywhere but in England be full of difficulties and dangers. It stands and prospers in virtue of the traditions that still live among English statesmen and the reverence that has ruled English citizens. It works by a body of understandings which no writer can formulate, and of habits which centuries have been needed to instill.

Let us note some of the claims made for a responsible ministry. Perhaps the leading claim is that it secures prompt expression of the will of the people and obviates delay in settling vexing questions. Too much is made of this and too little is made of the fact that

the delay is due to the failure of the people of the nation to make up their minds. This delay occurs in times of confusion even in countries where there are responsible ministries. It has occurred in Great Britain and in France since the armistice. The people have been in doubt. Policies have lagged.

The main result has been frequent changes of government. Likewise, in the United States in periods of confusion, until the people have made up their minds there is delay. When they have thrashed a matter out and come to a conclusion, that conclusion finds expression. The quarrel is rather with the people than with the machinery of government. And the need of delay for due consideration was recognized by the founders of the nation and checks were accordingly provided. The illustrations in this direction are too numerous and too fresh in the minds of readers to justify citing.

A second and leading claim is that a responsible system of government attracts into public life and retains there a larger number of able and experienced men. England is named as an example. Here again, too much is claimed for mechanism. The explanation in England largely is that there is a governing class of aristocratic origin, that it is not difficult for men of that class to secure access to public office, and that they have the leisure and the inclination to seek and to hold positions.

It is by no means clear that if we had a responsible system of government we should secure and retain in public life an adequate number of our ablest men. I know of no reason for believing that constituencies would, in making their selections, vote from different motives from those which now actuate them. Democracy does not and will not necessarily elect its ablest men to political positions. The masses are rather inclined, on the whole, to select men of an average quality, whose thinking and motives run more nearly with their own. Democracy does not seem to be able to stand for

very long the strain of living up to the thinking of men of the highest standards and the greatest intellects.

On the other hand, it seems more likely that the main effect would be a lower level of ability in the chief administrative positions of the nation. If the avenue to cabinet positions were through the House of Representatives and the Senate, probably very many men who can, under our present arrangement, be secured for heads of departments, would not run for Congress, with the possibility ultimately of being designated for the cabinet; but even if they did, it is doubtful if they would be elected. This may be unfortunate, but it is probably true.

Furthermore, if the heads of departments were selected from the leaders of the majority in Congress, unless the selection of departmental personnel were subject to more severe restrictions than at present, it is probable that the departments would be very much more political-minded than they are.

Nor is it by any means likely that the adoption of a responsible ministry would lessen or prevent proposals to resort on occasion to "alternate" or "spasmodic" dictatorships. Italy has such a system, and she also has a dictatorship; and France, with such a system, has more than once had a near approach to a dictatorship. Under any form of government, there will be groups desiring or fearing certain things which will in their impatience clamor for the destruction of checks or for the predominance of that branch of government which at the time seems most likely to suit their needs. At one time, convinced that the President stands for what they want, they will demand that he assume an aggressive leadership and smash congressional opposition. At another time, fearing the President, they will laud the outstanding hostile congressional leaders and call upon them to exercise all their powers to block executive programs.

There is much human nature revealed in such efforts and practices, but not much wisdom; and it was against

just such impatient and foolish impulses that the framers of our Constitution wisely provided obstacles. They realized the danger of mob psychology and action and wanted neither a legislative nor an executive dictatorship. They recognized that laws should embody the mature opinion of the whole people and express its character and should not reflect merely the hasty desires of a small coterie; and they clearly perceived that in a country like ours; wanting in deep-seated and controlling customs and traditions, there was grave danger of hasty and ill-considered change.

In general, it would seem that this country has not reached the point in the growth of its habits and traditions where it would be willing to dispense with some checks on the expression of the public mind. It is one thing for a government of an old and settled country with well-defined traditions and habits to have greater freedom of action. It is one thing for a nation with ruling classes, into the majority of whose population reverence has been instilled and which is provincial and limited in its outlook, to have such a government. It is one thing for a nation whose area is less than that of the state of Oregon to have such a government. It would be interesting to see one of our states attempt the experiment. But it would be another thing for a country as big as the United States of America, with its traditions in the course of rapid development, with large numbers of its people newly arrived, with greater similarity of economic conditions than exist in many smaller countries, with a more fluid state of mind, and more processes for the stimulation of impulses, to attempt the operation of a similar system.

And can it be said, after all, that our machinery, which is pictured as so defective, has been an obstacle to progress? Are we behind any other nation in the world in the mass of legislation intended to accomplish reforms? Are our financial and economic policies less satisfactory? Are we suffering from too little legisla-

tion? Have we been backward in ministering through legislative programs to the welfare of the masses of the American people or to any great class or section of them? It is common knowledge that we are in the forefront of progress in nearly every field of national activity.

I believe that our government, in a higher degree than that of any other nation, has an attitude of concern for the average man and has devised for his use helpful legislation and agencies. In spite of defects, real or imagined, we have a government of the people and for the people, and the people can by orderly processes bend it to their will and secure in the long run what the majority persists in wanting.

A better case should be made out before we seriously undertake to effect fundamental changes.

In the final analysis, whether a government is to succeed or fail and whether it is to work well or badly depends on the character of the population and particularly upon the capacity and standards of the electorate. In the past our machinery of government has worked reasonably satisfactorily, not mainly because of the merits of the machinery but primarily because the people were competent. Whether our population with its recent large admixtures of people from countries with radically different habits of thought, states of mind, and backgrounds of experience, is as competent as it was formerly or will remain so is a matter for debate. The right kind of people can run any sort of government. The wrong sort of people cannot run any kind of government.

GROWTH OF PRESIDENTIAL GOVERNMENT IN EUROPE²

The United States of America was the only country that came through the World War with its fundamental

² From article by Charles E. Martin, University of California, Southern Branch. *American Political Science Review*. 17: 567-83. November, 1923.

principles of government unchanged. War necessitates a powerful and, in a parliamentary sense, irresponsible executive. Wars cannot be won by deliberative assemblies nor by executives harassed by such assemblies. That great national emergencies call for a dictator—a powerful and politically irresponsible executive—the Romans discovered two thousand years ago, and we of the twentieth century have re-discovered. To win the war France set up a dictator, and his name was Georges Clémenceau: to win the war, Great Britain set up a dictator, and his name was Lloyd-George; to win the war the United States set up a dictator, and his name was Woodrow Wilson. To have attempted to carry on government under old parliamentary forms would have been ruinous, for warfare requires quick and decisive action—the very thing deliberative assemblies lack.

The proposition is submitted that a government based upon a separation of powers lends itself more readily to concentrated and politically irresponsible executive power than do other forms of government. The parliamentary system is essentially a union of powers. Its differentiating characteristics is an intimate relation between the executive and the legislative branches, a relation so intimate as to amount to union. The executive can at all times be questioned and criticised by the legislative, and can be brought to task for its political failures. That results in responsibility and responsiveness, two sound principles of government. But under the strain of war the parliamentary system of responsible government broke down. The demand for quick and decisive action took precedence of responsibility and responsiveness. Cabinets developed inner circles which were clothed with dictatorial power and relieved of responsibility to parliament. In England the War Cabinet was composed of five members, Lloyd-George, Lord Curzon, Lord Milner, Arthur Henderson and Bonar Law. Of course, it is an open secret that this cabinet paid very little attention to Parliament. It did the governing while

Parliament did the deliberating, and between the two there was a wide gulf fixed. For all purposes it was an independent and separate executive organ. That is to say, England accepted the principle of the separation of powers in order to win the war.

The United States, on the other hand, found no necessity of changing its principle of government. Based upon a separation of powers with an independent and politically irresponsible executive, all it had to do was to strengthen the hands of the executive by legislative enactment. Congress did that, and the President proceeded to prosecute the war with all vigor. Thus our principle of government proved adequate to a great national emergency.

A logical conclusion might seem to be that a separation of powers is suitable for war while a union of powers is suitable for peace. On the other hand, it might be contended that the breakdown of parliamentary government under the stress of war only brought to light an old situation. That the cabinet is controlled by the Parliament is an axiom of parliamentary government; but the war proved that in a great national emergency that axiom could be little more than a fiction. What actually happened was that the cabinet controlled the Parliament. And that suggests the reflection, did the war not simply lay bare something that had been covered up? Is not the control of Parliament by the cabinet normal and the reverse a fiction? To be sure, cabinets do not in peace times attain complete independence and separation such as the British War Cabinet enjoyed; but more and more they are seeking by means of blocs and political arrangements to make themselves independent and to discharge an independent function of policy-forming and direction. Mussolini has asked for and has received full governmental powers for certain purposes for one year. Surely that looks like a separation of powers. In a word, the goal of cabinet government seems to be a qualified separation of powers.

Moreover, changes in the direction of presidential government in a modified form have not been limited to those countries whose political institutions have not undergone radical alterations. Most of the recent constitutions of Europe have introduced the principle of ministerial responsibility. Cabinet government is adopted, but with modifications. Generally, a president and premier are provided, each exercising independent powers. One is said to represent the country while the other is said to represent the government. Supremacy in power and position will depend on a number of factors, both determinate and indeterminate. On the whole, the new constitutions have established an executive semi-independent in his relation to the other branches of government. Ministers are required to assume responsibility for the political acts of the president. They are given the privilege of the floor in the legislature to present and debate measures, and if members, to vote. They also have the duty of preparing the budget, and the responsibility of framing laws, and submitting them to the legislature.

Political discussion has for a quarter of a century revolved around the subjects of the cabinet or parliamentary and the presidential systems of government. The lines of demarcation have been sharply drawn, and discussion has generally taken the course of suggesting the complete abandonment of one system and the wholesale adoption of the other, with little regard to the trend in countries where one system prevails toward the adoption of certain helpful and remedial features of the other. The parliamentary system has for its organs of government a titular head of the state, hereditary or elected for a term of years, who is not responsible to the legislature nor removable by it; a group of ministers selected and dismissible by the representative legislative body and responsible to it; and a legislature of one or two chambers, chosen by the electorate for a term of years and liable to dissolution by the

executive head. The presidential system has an executive head elected by the people for a term of years, removable by impeachment, but politically irresponsible to the legislature; a cabinet appointed and dismissible by the president and responsible to him; and a legislature elected by the people for a term of years and not dissoluble by the president. It is clear that either system can be improved by the application to it of certain sound principles and practices of the other. Our problem is not to establish the existence in Europe of a pure presidential system of government. It does not exist. Rather, it is to determine the extent to which prevailing systems, admittedly parliamentary in origin and spirit, have become presidential; and how far presidential features obtain in the more recent constitutions of Europe, which as a type, have attempted a combination of the characteristics of both systems.

The recent evolution in cabinet government finds no more eloquent illustration than in Great Britain. It is true that the form and machinery of government change slowly, and institutions persist long after the social and economic order which they were designed to serve has seen its day. However, just as the monarchy, once all-powerful, is today a symbol of power and a source of order, so the parliament, the mother of representative institutions and the cabinet, the leader of the Parliament, have in recent years fallen from their former high estate and have given place to one who was formerly only *primus inter pares*. Lloyd-George made the office of prime minister a virtual presidency. While premier, he derived his power from the people and the press, and not from the Parliament. The cabinet had become, like the American cabinet, a group of heads of administrative departments, with the power of initiative and decision resting on the prime minister. Lloyd-George early established his independence of the House of Commons. His appearances there were to deliver speeches more in

the nature of messages than declaration of legislative policy, determined upon by the cabinet in its collective capacity. The tactics of Roosevelt and Wilson in dealing with an unwilling and hesitant Congress were used to the full by the versatile and opportune Lloyd-George.

President Wilson, in 1915, instead of taking his party leaders into his confidence, toured the country speaking for preparedness and for the support of the measures he proposed. The then Democratic congressional organization was not altogether friendly either to preparedness as a general policy or to the particular measures recommended by Mr. Wilson. His combined appeal from the platform and through the press to the people was a formidable weapon which the Congress could not resist. The leadership of Mr. Lloyd-George followed the American model. He simply announced to the Parliament the lines he intended to follow, without seeking the formal approval of his cabinet as a council of ministers. His parliamentary announcement was generally preceded by a generous broadcasting of his policies through the press and from the platform. To state that these practices were but for the moment, and will have no place in present or future governments is beside the point. The significant fact is that they obtained successfully under any English government.

Ministerial responsibility signally failed in England during the war. Because the government did not function properly under the leadership of Asquith, Lloyd-George came into power in 1916. He immediately proceeded to distinguish between the ministry and the cabinet. A Committee of Five was set up, two of whom were ministers without portfolio. The prime minister was first lord of the treasury, another had merely a titular office, while Mr. Bonar Law was chancellor of the exchequer and the leader of the House of Commons, in place of the prime minister. This was an advanced step toward the American presidency. A unionist

cabinet was led by a liberal premier. The change resulted in upsetting two conditions precedent to successful parliamentary government, namely party divisions and collective responsibility. Secrecy in proceedings was no longer observed, and a secretariat was appointed to do the routine work. Lloyd-George continued his hold on power, not through a dependence upon the House of Commons, but by the demands of public opinion, manifested in various but definite ways.

The evolution of the British system indicated by the foregoing leads to an important conclusion—the decline of Parliament. This is evidenced in the assignment by the prime minister of the leadership of the House of Commons to one of his colleagues. Its impotence is accentuated by the rise of other instruments for giving expression to the will of the people. Class and occupational groups are clamoring for representation. Until formal representation is secured, they urge Parliament to do their bidding. As a result, the Parliament appears to be a ratifying body of proposals issuing from non-legal and even non-political organizations. Moreover, the overwhelming burden of state work has substantially reduced the position and importance of Parliament. This must from its nature be performed by the executive, and tends to multiply the agencies and powers of the executive. Finally, the House of Commons lost caste under the régime of Lloyd-George due to its unrepresentative character. Accepting as it did the dictum of the prime minister, Parliament could hardly be said to represent anything except its desire to avoid dissolution. Even Lloyd-George was preferred to that. The unionist's victory under Bonar Law provided no remedy for this defect. The liberal disintegration, the unsettled labor policies, and the personal following of Lloyd-George have so divided British forces until the voter does the most obvious thing—returns a unionist House of Commons. It may be said that political power in England

has gone through the following successive states: The supremacy of the King; of the Parliament; of the cabinet; and of the prime minister.

Imperial concerns have contributed to the transformation of the premiership into a presidency. The heads of the governments of the self-governing dominions have since the war become real prime ministers. They became brothers in government as well as in arms. They became partners in empire. It was suggested by a certain London newspaper that Winston Churchill, then secretary of state for the colonies, should preside at the conference of the dominion premiers, in June, 1921. These officials refused to agree to any such arrangement, and demanded that Lloyd-George preside. One premier referred to Mr. Lloyd-George as "President of the British Dominions."

To be sure, an effort has been made to resume party government. The result has been a colorless and unsettled majority, and a divided opposition. Moreover, a return has been made in theory to the practice of collective responsibility. It was completely broken down under Lloyd-George. For several years Great Britain was ruled by a political genius whose will was law, and who reduced his colleagues in the ministry to the status of mere heads of executive departments, individually responsible to the prime minister.

While the presidential system may keep in power a president or a party long after their welcome has gone, so is the parliamentary system open to criticism because it permits such abrupt and sometimes frequent changes of the executive as to block the development of policies requiring time to bear fruit. This is particularly true in France. The fate of a ministry is always hanging in the balance. Cabinet crises are always taking place. New men constantly are displacing old ones at the helm of government. The French ministry is ordinarily weak and ineffective. It does not have sufficient authority to direct and control a majority of the Chamber of Deputies.

It is usually composed of the leaders of several groups some of whom have served in former cabinets. Moreover, it cannot dissolve the Chamber of Deputies, which power is practically necessary to cabinet control.

The President of France is also by custom an executive of little real power. He is elected for a term of seven years by the two chambers of the legislature meeting in joint session. As head of the executive government he is charged with the execution of laws and the power of proclaiming a state of siege; control of the army and navy; the conduct of foreign policy; the power of appointment; the power of pardon; the right to propose laws (concurrently with the members of the legislature); the power, with the consent of the Senate, of dissolving the Chamber of Deputies; the power to summon the chambers in extraordinary session, and to invite them to proceed to revise the constitutional laws; the right to address messages to the chambers; the power to adjourn the chambers for a month, but not more than twice within the same session; and the power to require the chambers to consider anew a law they have passed. These powers, substantial in themselves, are exercised by or through his ministers, by one of whom each of his official acts must be countersigned. In the matter of selecting a person to form a ministry, he must act independently of his ministers, though usually with the counsel of the presidents of the Senate and the Chamber of Deputies. He may also advise the ministers in their conduct of public business.

Many French publicists and statesmen are dissatisfied with the present arrangement of a nominal executive with ceremonial duties and a real executive dominated by the legislature. The principle of the separation of powers has been recognized in every French constitution. It is proposed that the presidency should be used as a great motive force, and that an office of unlimited possibilities should not be over-shadowed by the legislature. President Millerand has declared that the nation's

will expressed through its representatives, needs a "free executive power under the control of Parliament," in order to be executed and to command respect. In the matter of foreign affairs, it has been the intention of Millerand to direct and guide, and to select premiers who will carry out his policies. Moreover, there is proposed the establishment of the judiciary upon an independent basis with the right to review enactments of the Parliament. Such measures would decrease the power of the Parliament and would make of the French government virtually a presidential system.

Certain weaknesses of the French system are brought to light by the fall of the Briand government in the middle of the Cannes Conference. It illustrates at once the weakness of the responsible executive and the determination of Millerand to give practical effect to his proposal of a free executive power. Millerand has threatened one dissolution, has intervened to remove one premier and install another, and actively sponsors the government of the new premier. Clearly, then, the French president is not today merely a nominal executive.

In no country has the defects of the parliamentary system been so exemplified as in Italy. The instability of parties, the weakness of ministries, and the ever recurring changes in government do not encourage sound government and administration. The word "crisis" is the bane of Italian politics. These parliamentary situations dominate the press, the attention of the people and the activities of government, both political and administrative. Any presidential features which can succeed in Italy in the direction of securing continuity of policy and stability of government would substantially improve their ineffective parliamentary system.

The reconstruction of executive power in the direction of an independent and even controlling executive springs in Italy, as in France, from a pronounced nationalist movement. The Fascisti movement was organized principally to combat the forces of bolshevism and

radicalism which spread over central and southern Europe following the armistice of November 11, 1918. The political effects of the movement were felt in the summer of 1919, when the Facta ministry resigned, due to charges of slackness in enforcing the law against the direct action of the Fascisti. For a month or more Italy was without a government. The enforcement of law was practically at a standstill. The protection of property and fundamental rights, and even police protection, were afforded by the Fascisti. The government, therefore, was in the hands of a volunteer, extra-legal organization, which was destined in the course of time to become the government.

When the King commissioned Benito Mussolini, leader of the Fascisti, to form a ministry, a presidential system was virtually put into effect through a "bloodless" revolution. It is sufficient proof that such a system can be inaugurated by custom as well as by constitutional arrangement. The aims of Mussolini, as set forth in his address to the Italian legislature, and as indicated by his practices, seem to spell the doom—temporarily at least—of the parliamentary system. A majority of his cabinet are Fascisti. He has received full powers of government for one year in certain matters. The custom of a fixed executive tenure is thus introduced, as is the principle of certain executive action without parliamentary intervention or consent. In the frankest possible terms, Mussolini announced his presence in the Italian chamber to give prompt force and effect to a revolutionary movement which was to be bloodless if unopposed, but permanent at any cost.

Our interest is not confined to those states whose nominal or real executive has through process of political evolution developed presidential features. The new constitutions of Europe with their arrangements for a responsible premier and a semi-independent head of state, generally called a president, reveal distinctive presidential, as well as parliamentary, characteristics. This

combination, the result of a desire for a parliamentary, government long agitated by the German liberals, had to be introduced in Germany. However, the Germans were not satisfied with merely a titular head of state. The constitution, therefore, sets in motion the general features of the parliamentary system, together with an executive who is at once a titular chief of state and an active and independent force in legislation and administration.

The German president resembles the President of the United States in several particulars. One point of resemblance is the constitutional arrangement which gives him a strong personal position. He is to be elected by the whole German people, and will therefore receive his authority from the same source as Parliament. As in the United States, it is a more concrete expression of popular will than is the election of a legislature, and is in a very real sense a mandate from the people. This method was consciously and deliberately adopted in order to give the president the authority and independence which the national assembly deemed necessary.

Moreover, the powers granted the president of Germany are of sufficient scope to guarantee a certain independence leading to a qualified separation of powers. He is not confined to executive authority alone, but he may have a part in legislation, and may even control the Reichstag. He represents the Reich in international relations, makes alliances and treaties with foreign powers, accredits and receives diplomatic representatives, appoints and removes national and military officers, commissions the chancellor to form a ministry, has supreme command over the entire military forces of the Reich, exercises the right of pardon, issues regulations, and promulgates and publishes laws. Orders and decrees carrying these powers into effect must be countersigned by the chancellor or the competent minister. Thus responsibility is fixed and accepted. Other powers greatly extend his authority.

Under the constitution, the president, in case the public safety or orders are disturbed, may take necessary measures to restore it, even with armed force. He may also suspend individual liberties guaranteed by the constitution, including personal liberty, the sanctity of private property, the inviolability of one's dwelling, secrecy of communication, freedom of speech and press, the right of assembly, and the right to form societies or associations. This amounts to the right to declare a state of siege. Serious dangers to the public safety only can justify these measures. Only the president can decide if and when this condition exists. Until a law is passed regulating the details of suspension, the power of the president is practically unlimited as regards a state of siege. General and permanent, as well as emergency measures may be taken, and tribunals may be established to deal with the situation. The president may, under this right, break down the normal processes of government in any given region and establish a dictatorship. No other power is so constantly or so widely used in Germany today. The Reichstag must be informed of the executive measures taken, and may demand of the president their withdrawal. No other check on the executive in the use of this power exists.

A third characteristic of the German executive, which finds its counterpart in the United States, is the principle of checks and balances. This brings us to his relations with and his control over the Reichstag. He may order the president of the Reichstag to convoke it earlier than the normal opening date. He has the power of dissolution. He may submit an enacted law to a referendum before its promulgation. He may proclaim immediately a law which the legislative bodies have declared urgent, in defiance of a demand of one-third of the Reichstag. Such promulgation prevents, in effect, a referendum. Where the Reichstag and Reichsrat disagree as to a bill, the president may declare it inoperative, or may decide for a referendum. When a law has been passed by the

Reichstag by a two-thirds vote against the protest of the Reichsrat, he may promulgate the law, or submit the question to a referendum. Through the power of referendum and dissolution he can influence and check legislation, make and unmake ministries, and change the personnel of the Reichstag. Certain legislative and ministerial checks operate against the president. His power and influence, therefore, are widened by positive checks against other agencies of government, and are limited by the rights of interference of other branches.

The goal of democratic government, in a legislative and administrative sense, is a satisfactory understanding and cooperation between the various branches of government, particularly the legislative and executive. A great advance in this direction is a definition of the relations of those bodies by fundamental law. Without minimizing the value of parliamentary institutions, it is submitted that much has been gained by movements, both customary and constitutional, toward the more stable and secure presidential type. War and reconstruction have wrought fundamental and necessary changes in the powers and functions of the English, French and Italian executives. Moreover, the new constitutions, creating a head of state with both nominal and real powers, have definitely recognized the need of a stronger executive, and have supplied the capital defect of the extreme parliamentary régime. It is with satisfaction, therefore, that we conclude that this feature of the American system has commended itself to the governments of the world.

CABINET AUTOCRACY AND ITS REMEDY³

There is a general feeling among men of all parties that the parliamentary machine is not working well—that Parliament itself no longer holds its former high position in popular esteem. There is further a general consensus of opinion that this decline in the moral au-

³ From article by Pierse Loftus. *British Review*. 6: 195-207. May, 1914.

thority of Parliament is in the main due to the fact that the power of the cabinet and caucus over the House of Commons has reached a height undreamed of fifty years ago—reducing the private member to a condition of almost servile impotence. If we would arrive at a remedy, it is first necessary that we should clearly recognize the disease; and the following propositions, which one imagines will receive the assent of all reasonable men, are an attempt at a clear diagnosis. If we admit their truth the remedy is clear.

First. One may say that the struggle of the English Parliament for several hundred years has been to obtain an ever increasing measure of control over the executive. We may say that this is the main tradition of English politics—the check and control of the executive by the House of Commons.

Second. That, while more than a hundred years ago Parliament achieved and even fifty years ago maintained control over the executive, today the executive, as represented by the cabinet, is supreme and controls Parliament by various powers but in the main by the power of dissolving Parliament and thus forcing an immediate general election.

Third. That it is desirable that in any free state the legislative and executive powers should not (for all practical purposes) be concentrated in the hands of one small body such as the modern cabinet.

Fourth. That the reason the House of Commons is regarded with suspicion or even contempt, and its debates no longer attract attention, is because the people are beginning to suspect that the elected representatives of the people are mere voting machines controlled by the party whips.

Fifth. That, if our system of representative government is to regain the esteem and confidence of the people,

it is essential that the representative shall be free to represent and to vote conscientiously on the merits of each proposal and measure.

Sixth. That it is desirable in the highest interests of the state that members of the majority in the House of Commons should be able to censure or dismiss an incompetent cabinet minister without wrecking their party's supremacy and those great measures upon which the party is agreed.

Seventh. That it is a bad and dangerous condition for the state when it is of common and constant occurrence for a representative in the Commons to vote for a measure or proposal he believes may prove evil, in order to keep in power a government which may pass other measures he believes will prove good.

Eighth. That, as conditions are at present, it will become increasingly difficult to secure as members of the House of Commons men of high standing and independent mind, because men possessed of self-respect will not easily lower themselves to the level of mere voting machines pledged to vote as the party leaders dictate.

The foregoing propositions will hardly be denied by any individual speaking, not as a politician, but as a citizen concerned alone with the welfare of the state; but there may be some who will hold that they are necessary evils, inherent in representative government and impossible, therefore, to eliminate. They are neither necessary nor inherent, and one simple measure would destroy these evils and restore health and vitality to Parliament, making its debates again of vital interest to the nation.

That reform, necessary and inevitable if our whole representative system is not to break down, is to take away from the cabinet its present actual (though not theoretical) power of dissolving Parliament.

Of course, in theory the power of dissolution belongs to the crown, but for some three generations it has only been used on the advice of the cabinet; therefore, for all practical purposes the cabinet, and the cabinet alone, possesses this tremendous power of dissolving Parliament at a moment's notice. Again in theory, the Commons exist to control the cabinet: that more or less self-elected committee which has gradually succeeded in concentrating all powers into its own hands, securing such absolute control of so many levers of pressure on the rank and file of members of Parliament that the theoretical control by the Commons over the executive has become a fiction. Indeed, the process is reversed—the cabinet controls the Commons.

How has it gained this control? What are the means of pressure which the caucus and the cabinet can bring to bear on the Commons?

In order to discover these methods, let us consider what an individual private member or group of members have to face when they vote against their party and thereby defeat the government.

In the first place, the member knows that the defeat of the government will probably mean an immediate general election. The cabinet will use the royal prerogative to dissolve Parliament, and the member will be forced into all the risk and turmoil of a general election.

Now the expenses of an election amount to a considerable sum: probably several thousand pounds. Therefore the member of the House of Commons who, by his vote conscientiously given, amends a clause of a government bill against the wishes of the caucus is, by that very act—the ordinary duty of an honest representative, fining himself a sum of several thousand pounds, the expenses of his contested election.

Nor is this all, for it is highly probable that because he has voted against the party machine, the whole force of the caucus will be used against him, and he may

have to face an election not only without the aid of the party funds, but probably with an official candidate of his own party against him. This candidate, selected and financed by the central caucus, will split the party vote and almost certainly destroy his chance of re-election.

But whether the caucus supports him or opposes, he risks in the general election the loss of his seat and of four hundred pounds a year: and with the loss of his seat he must generally say farewell to all his ambitions, social perhaps as well as political, so that the strong influence of his wife and family may be against a too strict sense of public duty.

But apart from these more material inducements a nobler impulse makes many a member of the House of Commons vote for a bill or a clause which he considers evil in order to prevent a defeat of the government. He is influenced by the fact that, if he defeats the government, he imperils the great measures which he really and perhaps ardently desires to see enacted: all the great measures upon which the party is united. This fear is probably the strongest motive with really sincere party politicians, and undoubtedly it causes many a member to support measures and men alike undesirable.

In addition to the foregoing inducements we must remember the many other instruments an omnipotent cabinet can use. It can bribe rebellious members by peerages or baronetcies, by recorderships and judgeships, and by offers of a minor position in the government. It can use enormous social pressure, and it can bring business pressure to bear on the member who is a solicitor, an engineer, a company director, and so on. It is not unknown for the rich controllers of the caucus to place work in the way of an able young solicitor who happens to be a member of the party. It may mean financial ruin if this patronage is withdrawn, and too much independence may cause it to be withdrawn.

The present system of cabinet autocracy therefore encourages a false and subservient travesty of representative government. It directly induces a member of Parliament to vote for a bill he considers evil in order to keep in power a government which may ultimately pass measures which he desires and which he considers beneficial to the country. In short, the member of Parliament is forced to act on those much abused principles, "do evil that good may come of it," and "the end justifies the means."

The system seems designed to place every obstacle in the way of true representative government. It prevents the representative representing, it forces him to pay more attention to the wishes of the caucus than to the wishes of his constituents, and it places him bound hand and foot in the power of that executive whose actions he is supposed to check.

The system not only leads to legislation in opposition to popular will, but it is also fraught with grave danger to national security. As an instance in recent political history we may take the unfortunate army corps scheme of Mr. Broderick in the last unionist administration. Not even the most credulous student of Parliament dare affirm that every unionist member who voted for that impossible plan believed it either workable or desirable in the interests of the state. It is notorious that many voted for it only in response to Mr. Balfour's appeal for party loyalty. Probably on a free vote without whips the majority of the unionist party alone would have voted against it: but the threat of the resignation of the government followed by an immediate general election made many unionist members give their votes in favor of a scheme of national defence which they believed to be unsound.

Now such a position is not only absurd, but it is fraught with grave danger to the state. Consider what it means! On a vital scheme of national defence we

find members voting millions of pounds for a plan they realize is wrong and impracticable. The reason they are forced to do this is because under our absurd system, if they voted as they thought best for national interests on this particular and vital matter, they would be penalized, not only by a general election (with probable loss of their seats), but also by the loss of certain other measures they consider desirable, and they would further have risked the almost certain defeat of their own party at the polls and the formation of a liberal government hostile to all their national and imperial ideas.

Had they been assured that the defeat of the army corps scheme would not have involved a general election, and that it would at most have caused the resignation of the government followed by its reconstruction or by the foundation of a new conservative cabinet (for the majority in the House being unionist the new cabinet would have been conservative), there is little doubt that Mr. Broderick's plan would have been defeated on its merits.

This is but one instance out of many; for we can hardly believe that every member of the Commons who voted for the insurance act or the 1909 budget approved each and every clause. It is reasonable to suppose that considerations about subsequent bills, home rule and so on, induced many to vote for taxation schemes they detested.

But in addition to this detestable practice of voting for undesirable measures in order to obtain desirable measures, the system leads to another evil of equal magnitude: namely, that it is impossible to censure one incompetent cabinet minister in charge of a great department without forcing the resignation of all other cabinet ministers, who may be thoroughly competent. Now the function of Parliament not only is legislative—another and equally important function is the close control of administration. In fact, the first, the earliest function

of Parliament was criticism and control of administration.

It is obvious that it should be in the power of the members of the House of Commons to censure and dismiss an incompetent or undesirable minister. In theory, of course, it is possible; in practice it has become impossible.

A premier, popular with his party, can choose an incompetent personal friend for a great public office, control of a service vital to the nation—and the party is powerless to prevent, powerless to dismiss or censure: unless they destroy the cabinet and with the cabinet their own position. In truth, the only method by which the House of Commons can defeat a cabinet measure or censure an inefficient cabinet minister is by destroying itself; by suicide. Doubtless the system of protest by *hari kari* had its political uses in former ages in Japan, but we learn it has fallen into disuse and is regarded as a relic of a more barbarous period. In England alone, of all countries in the world, the custom survives—the English Parliament alone of all European Parliaments must destroy itself to destroy one cabinet bill or one cabinet minister.

No executive in the world has achieved in practice the uncontrolled power of the English cabinet. The nearest parallel in modern history is to be found in the Committee of Public Safety during the Terror of the French revolution. Like the cabinet, this was an all-powerful executive committee, meeting in secret and controlling all things. All the levers of power were held by the committee till it became a despotism—the strongest and most ruthless that history has ever seen: and though undoubtedly it saved France, its tyranny became so unbearable that, but for Napoleon, a royalist restoration had become inevitable. Yet the constitution of the committee was more democratic than that of the English cabinet, as its members were *elected* by the convention, not *selected* by one man, the premier.

Of course, in theory the convention governed France, but in actual practice the members of the convention were well-nigh as powerless as the members of the British House of Commons of today.

In one case the members were controlled by the committee, threatening the insurrection of the people of Paris, a method, however undesirable, at least resting on popular support. In the other case the members are controlled by the cabinet threatening dissolution and an election without the aid of the party funds—a method resting on secret financial rather than on popular support.

It is hardly too much to say that all history proves that no single man or group of men is great enough to endure well-nigh absolute power without a certain amount of moral degeneration; and that uncontrolled despotism always inflicts serious injury on the body politic. The English cabinet during the last fifty years has absorbed all power in the state. This committee has abolished the privileges of the peers, the only body that had independence enough to enable it to oppose the caucus.

The caucus cabinet is now supreme. It selects candidates for constitutencies; it decides upon what "issues" the powerless citizens shall vote; it makes peers and judges; distributes honours, offices, and emoluments; makes and dismisses at will the naval and military commanders; frames all legislation, not only in outline, but often in actual detail; apports the time of Parliament for futile debates and is practically immune from effective censure by Parliament. Indeed, Lord Hugh Cecil has confessed that it is highly improbable that the House of Commons will ever again deliberately defeat or dismiss a cabinet from office.

Such uncontrolled despotism is contrary to all national traditions, and in order to check and control the cabinet it is absolutely necessary to restore freedom to the ordinary private member of the House of Commons, to release him from the rigid control of the party whips,

and to permit him to act as a real representative, voting on every clause and every bill according to his sincere convictions. Above all he should be free to censure an incompetent or undesirable minister. His freedom can *only* be obtained by taking away from the cabinet its actual power of dissolving Parliament.

EXECUTIVE OFFICERS IN CONGRESS⁴

We are often attracted by the distant scene. And are almost as often deceived. Even scientific training and practical experience are not certain to rectify the errors of our vision. Perhaps no field of investigation is more subject to this hallucination than is the study of government. Our government, near at hand, is subject to the contempt bred of familiarity, while certain features, at least, of England's government, or Germany's, or even Italy's, appear by contrast well-nigh perfect. This, of course, is not the tendency among those who accept their ideas of our institutions, ready made, from the 100 per cent American. But it sometimes crops out in the statements of men who ordinarily display impartiality in their analyses of political phenomena.

Gazing wistfully beyond the boundaries of the United States, they behold the enchanting sight of an executive subject to legislative control, its tenure dependent on legislative favor, enjoying, as a consequence of that relationship, a commanding position in formulating and enacting programs of legislation. With vision still focused on the remote, what do they see near at hand? One of those afflicted with chronic maladjustment of sight has described at length "the decline of Congress, which no one now denies." Its organization is "preposterous." He accepts unquestioningly the lamentation of another Jeremiah that "alone among modern representative assemblies, the American House of Repre-

⁴ By Howard White, Ph.D., Illinois; Professor of Political Science, Miami (Ohio) University. *Constitutional Review*. 12:148-56. July, 1928.

sentatives tends to decline in prestige and authority," and strangely overlooks the conclusion of the most careful and comprehensive observer of political institutions in modern times, Viscount Bryce, who noted "in nearly every country some decline from that admiration of and confidence in the systems of representative government" which prevailed in the early nineteenth century.

Reputable scholars who recognize existing conditions admit that England's parliamentary system cannot be immediately transplanted to our soil. The writer first quoted assures us that his "is no proposal to 'tamper with our constitutional form of government'." The authors of a widely-used treatise on American government correctly state that "to change over from our present presidential form to the cabinet form would entail not only drastic amendments of the written Constitution but a reconstruction of the entire theory on which our governmental system is based." Yet they betray their fascination for the foreign system by asserting that "the admission of heads of departments to the floor of Congress, without votes, is practicable, desirable, and, one may venture to add, probable."

The vision of a modified parliamentary system for the United States has appeared not only to men in the supposed seclusion of academic circles, but also to men with wide experience in governmental affairs. Justice Story argued for it in his *Commentaries on the Constitution*. President Taft made a seemingly unappreciated attempt to break the barriers for his successor by recommending seats in Congress for cabinet officers, in a message sent to Congress shortly before the end of his term. While Secretary of State in 1924, Charles Evans Hughes declared that

it ought to be possible for cabinet officers to take part in the debates in both Houses on matters touching their departments and thus be able to defend themselves against unjust attacks. . . . It would not be difficult to arrange the mechanism of such contact if its importance were recognized.

Nor are we devoid of legislators willing to try their skill in arranging "the mechanism of such contact." Three bills, introduced by Representatives Kelly, Montague and Mooney, respectively, are slumbering soundly in committees of the 70th Congress.⁵ The sleep which these bills enjoy is not that of newborn infants. Rather, it is the calm repose of bills long accustomed to committee pigeonholes. Going back to the 67th Congress, we find that the same men introduced these bills. They were all referred to the Committee on the Judiciary and there they remained. Senators McLean and Couzens were the proud parents of similar sleeping beauties. Senator McLean's bill slept in the nursery of the Senate's Committee on the Judiciary while Senator Couzens' was deposited with the Committee on Rules.⁶ Five bills to accomplish this object were introduced in the 68th Congress, three in the 67th.⁷

Their genealogy may be traced back farther. On January 6, 1925, during a brief discussion concerning seats for cabinet members—apparently the only occasion in recent years when this subject has been debated in Congress—Representative Montague stated, with what pardonable parental pride and what implied rebuke to his colleagues the *Record* does not reveal, "I have introduced the identical bill recommended by those gentlemen for the past thirteen years."⁸

It is significant for the viewpoint which this paper seeks to establish that President Wilson, whose earlier writings had described so disparagingly the relations between the legislature and the executive in the American system and under whose skilful leadership executive influence in legislation was attaining a new high mark of effectiveness, did not use his influence to secure the enactment of Mr. Montague's bill.

⁵ H.R. 91, H.R. 5625, and H.R. 5627, 70th Congress, 1st session.

⁶ H.R. 190, H.R. 3873, H.R. 3908, S. 1543, and S. 3406, 69th Congress, 1st session.

⁷ In the 68th Congress, S. 2759, H.R. 175, H.R. 2894, H.R. 11364, H.R. 11855, the last two having been introduced in the second session. In the 67th Congress, S. 59, H.R. 2211, and H.R. 8345.

⁸ *Congressional Record*. 68th Congress, 2d session, p. 1342, January 6, 1925.

The forlorn hope for the eventual admission of cabinet members to the privilege of debate in Congress is principally tied to two points. One is that the exclusion of cabinet members in the beginning was accidental. The other is referred to by Representative Montague—and he is not alone in clinging to these incidents⁹—as the unanimous report of “two very eminent committees.” The reports were submitted, he vaguely states, “some years ago.”

“Some years ago?” Yes. One was submitted by a select committee of the House of Representatives in 1864¹⁰; the other by a similar Senate committee in 1881.¹¹ Some one may remark that at least these were committee reports, unanimously accepted by the respective committees, whereas none of the many bills sent to committees in recent years have even rated an adverse report.

What do the reports show as to the sentiment in Congress in that period? Investigation of the circumstances attending the action of those committees reveals one and only one active agitator, Mr. Pendleton of Ohio. First in the House and later, after being elected to the Senate, he secured the appointment of the select committees. Being select, not standing committees, it was quite natural that he should be the chairman in each instance. The committee report in 1881 was substantially a speech of Senator Pendleton’s delivered two years before.¹² So that the names of such prominent senators as Allison, Blaine, Ingalls and Platt, attached to the report, do not indicate that they were actively sponsoring the project. None of them spoke in the Senate in favor of the bill which the committee submitted. No one but

⁹ Message of President Taft. *Congressional Record*, 62d Congress, 3d session, p. 895; Ogg & Ray. *Constitutional Review*, p. 270-1; Beard, *American Government and Politics*, 4th ed., p. 219; Garner. *Political Science and Government*, p. 436; Ford. *Rise and Growth of American Politics*, p. 383.

¹⁰ *Reports of Committees*. 38th Congress, 1st session, vol. 1, April 6, 1864.

¹¹ *Senate Report* 837, 46th Congress., 3d session, February 4, 1881.

¹² *Congressional Record*. 46th Congress, 1st session, p. 967-71. April 28, 1879. No action being taken on the bill (S. 227) in the interim, toward the close of the session Senator Pendleton secured its reference to a select committee of ten. It should be noted that the “unanimous report” was signed by eight.

Senator Pendleton had spoken for the measure in 1879, and Senator Morrill's reply on that occasion concluded the debate. If the eight prominent members who signed the report had actively supported the measure, it is difficult to believe that they could not at least have brought it to a vote in the Senate.

Why have the mass of legislators been so indifferent, if not openly hostile, to the proposal for which Mr. Pendleton labored so diligently. Proponents of the change answer by advancing their other point, that the exclusion of heads of executive departments from participating in legislative debates was accidental in its origin, and has continued only through the inertia which resists change.

The fact that there is no formal constitutional difficulty in the way lends plausibility to the accidental origin theory. "Each house may determine the rules of its proceedings," the Constitution says. Each house could, by rule, provide for cabinet members appearing before it. The act of 1817 giving territorial delegates seats in the House with the right to debate but not to vote has been cited as a precedent. According to Mr. Charles Evans Hughes, the extension of a similar right to department heads is a "desirable change" which "could be made at any time under appropriate rules which would promote the convenience both of cabinet officers and the Houses of Congress."¹²

If the exclusion of the cabinet is merely a custom, and bears no fundamental relation to the American governmental system, then the question "who is responsible for establishing the custom?" is indeed a serious one. The late Henry Jones Ford seemed to accept the accidental origin theory, and labored diligently to prove that James Madison, animated by a jealousy of Hamilton, with whom he had collaborated a few months previously in writing the *Federalist Papers*, took advantage

¹² *Congressional Record*. 68th Congress, 2d session, p. 1341, January 6, 1925.

of his position in the first House of Representatives to keep Hamilton from appearing on the floor.¹⁴

How did Madison accomplish this? According to Professor Ford, he fell in line with the antifederalists who, during consideration of the bill for organizing the Treasury Department, were opposing the provisions authorizing the secretary to "digest and report" plans. "Doubtless the clause would have been adapted in its original form," he surmised, "had not Madison altered the whole situation by favoring a compromise, to be effected by changing the word 'report' into 'prepare' so that the secretary should have authority to 'digest and prepare plans' but should no longer have authority to report them to the House, as had been Robert Morris's practice" in the Confederation Congress.

Continuing his indictment, Professor Ford contended that "the antifederalists were not strong enough to overthrow the Constitution, but they were able to give it a twist that defeated the main feature of the original design, which was to complete and establish the executive authority that had been already introduced, and at the same time erect barriers against congressional invasion of executive functions."

This censure does not appear to be warranted by the facts. In the first place, the antifederalists were a small minority in the first Congress. They held only twelve seats to the federalists' fifty-three. Secondly, the change of this one word "report" to "prepare" was proposed by a federalist, Fitzsimmons of Pennsylvania, who was rated by Senator Maclay as one of Hamilton's lieutenants in the House. Madison spoke next, and it is probably this circumstance which led Professor Ford to throw blame on him. But Madison either was not in the room when Fitzsimmons made the proposal or at least nothing in his reported speech indicates that he had noticed it. His statement, "these are precisely the words used

¹⁴ *Alexander Hamilton*, p. 220-1; also his earlier work, *Washington and his Colleagues*, p. 45-9. Chester H. Rowell adopts Professor Ford's version in "The Next Step in Washington" in *World's Work*, 49: 158-9.

by the former Congress," indicates this, for these words were "digest and report." Later in the speech he specifically favored "the power of reporting plans." Nothing in it refers to a possible substitution of "prepare" for "report." While conceding that "there is a small probability" that admitting a cabinet officer to the floor "may have some degree of influence upon the deliberations of the legislature," he did not drop the matter there. "Compare the danger likely to result from this clause with the danger and inconvenience of not having well formed and digested plans, and we shall have infinitely more to apprehend." It is difficult to understand how such language can be construed as evidence that Madison was opposed to the appearance of Hamilton or any other cabinet member before the House.

If the foregoing facts absolve Madison, and reduce materially the blame attributable to a small minority, responsibility for the change from the practice in the Congress of the Confederation must rest mainly upon the preponderant federalist majority. Evidently the members were fearful that cabinet officers would exert an undue influence if permitted to participate freely in their deliberations.

Nor was it only representatives who, in that first Congress, showed an aversion to the appearance amongst them of officers of a separate and coordinate department. Senator Maclay's account of the cold reception given President Washington and Secretary Knox when they came to ask the Senate's "advice and consent" to an Indian treaty, makes inevitable the conclusion that the exclusion of the President and his cabinet from congressional deliberations was not accidental in its origin. Something of the feeling back of the favorable action on Maclay's motion to refer to a committee the matter which President Washington wanted to see acted upon in his presence is portrayed in Maclay's comment on the incident:

The President wishes to tread on the necks of the Senate. . . . He wishes us to see with the eyes and hear with the ears of his secretary only. The secretary to advance the premises, the President to draw the conclusions, and to bear down on our deliberations with his personal authority and presence. Form only will be left us.

In brief, the change in practice with respect to the appearance of executive officers before Congress occurred as soon as the change from the government under the Articles of Confederation to that under the Constitution had been completed. It was not peculiar to the House. It cannot reasonably be attributed to fractional differences, for which a small minority in either body could be held responsible, nor to Madison's jealousy of Hamilton.

The fundamental reason for the change must be found in the system itself. There was some realization of this fact at the time. In the debate on whether the Secretary of the Treasury should be permitted to come before the House to report and explain his plans in person, Livermore, a federalist, pointed out the difference between the position of the new Secretary of the Treasury and that of the former Superintendent of Finance. The confederate Congress might admit the superintendent.

It might be safe in them, because they possessed the legislative and executive power; they could abolish his plans and his office together, if they thought proper; but we are restrained by a Senate, and the negative of the President.

The logical conclusion seems to be that the existence of legislative and executive branches each with constitutional powers beyond the control of the other makes impractical any plan for establishing closer cooperation between them by merely giving cabinet members the privileges of introducing bills and participating in debate. To expect popularly elected lawmakers to surrender their own initiative and follow a program of legislation prepared by a cabinet over which they have

practically no control seems to disregard some elemental characteristics of human nature. Those whose infatuation with the parliamentary system has led them to believe that it is possible to adopt an essential feature of that system while leaving untouched the executive's legal independence of the legislature, are urged to ask themselves what their own reaction as lawmakers would likely be if men over whom they had almost no control came into their assembly, introduced bills and consumed much of the time in arguing for those bills.

They are not likely to surrender voluntarily. By what stretch of the imagination can anyone envisage a republican legislature taking up a democratic cabinet's measure as does the English House of Commons with respect to government bills? Almost as much imagination is required to see such action even when the two branches are nominally controlled by the same party. It is not probable that the republican majorities in recent Congresses would have acquiesced in the appearance of cabinet members to defend administration policies.

An illuminating episode is at hand. On March 15, 1928, the House was discussing the naval building bill. Availing himself of the privilege accorded to cabinet members, the Secretary of the Navy came in and took a front seat. "Representative Huddleston, diminutive Democrat from Alabama, trotted down the aisle and went into action under Secretary Wilbur's nose." A member for nearly fourteen years, he declared that this was the "first occasion within my knowledge when a member of the cabinet who was greatly interested in the bill . . . has sat in the House while such a bill was being actually debated." Mr. Huddleston's assertion that "the House of Representatives is capable of dealing with questions before it without the assistance on such occasions of department officials" was applauded. Secretary Wilbur, according to the rules of the House, had to remain silent.

The members who had introduced bills to give cabinet members the right to take part in debate also were conspicuously silent. The majority floor leader, Tilson, came weakly to the Secretary's rescue with the statement: "It is a great pity that they do not avail themselves of the invitation and come here more often." But he carefully refrained from saying that he thought cabinet officers should have the right to take part in debate.

It has been asserted that Congress can legislate more intelligently if cabinet members are there to explain and defend their measures. Most legislation directly affects the executive and administrative branch of government. Does Congress decide that the issuance of railroad securities should be curtailed? It gives more power to the Interstate Commerce Commission. Is Congress disposed to aid the farmers in marketing their products? Then new duties must be conferred on existing bureaus in the Department of Agriculture, or new agencies created.

Recognizing this close relationship, it does not of necessity follow that administrators must participate in determining the policy. It is as logical to argue that legislators should constantly supervise the executive departments and assist cabinet officers in performing the duties imposed on them by law. Who are these heads of departments that they should know so much? Political appointees, serving for a few years, would Congress be justified in giving them precedence over chairmen of its own committees, men who have risen to positions of trusted leadership through many years of service? Obviously not. True, the President might be more disposed to select his cabinet from those with legislative experience, with demonstrated ability as ready debaters, but there would be the danger that even less attention would then be paid to qualifications requisite for the proper management of their respective departments.

The influence that we are presumed to draw from

the proposal to admit cabinet officers is that under the present arrangement the executive branch is not strong enough. If this were true, we might insist as did Senator Morrill in 1879 that

if . . . the executive power, as one of the coordinate branches of the government, is waning, or too weak when contrasted with that of the House of Representatives or with that of the Senate, either in open or in secret session, then I must respectfully suggest that a law or rule permitting a trained band of orators upon the floor of each House is not a legitimate way of reenforcing that power.

The inference, however, is not true. "Among the three great branches into which our national government is divided, the executive is the only one whose development in the past hundred years has been at the expense of the other two." Evidently the executive power has not been seriously hampered by excluding cabinet members from congressional debate. In the periods of extension of executive power, as under Presidents Roosevelt and Wilson, the executive influence in legislation has obviously been great. It is very doubtful whether, had cabinet members been present in Congress, the President would have obtained such liberal grants of authority. Under the existing system, legislators know that many of the measures on their calendars were framed by executive officers, but they are not unduly disturbed thereby because they realize that the fate of such measures depends upon some from their own number who adopt the orphans and champion their cause. Direct defense by someone from the outside would tend to arouse greater opposition.

If, however, the improbable came to pass and legislative bodies invited executive participation in their deliberations and enacted bills which the cabinet had introduced and defended, a president or governor would not be likely to accept such results with composure. The success of his appointees would tend to lessen his own

prestige. The President would become more like the English king. Perhaps this explains why President Wilson did not champion Mr. Montague's bill.

On the other hand, instead of a change in legislative rules, suppose cabinet members are given the privilege of introducing and defending measures by constitutional grant. It is highly probable that legislatures would find some means of relegating them to positions comparable in influence on law-making to those enjoyed by Vice-presidents and lieutenant-governors who have been constitutionally imposed upon Senates as presiding officers. In spite of all his efforts, Mr. Dawes' influence on the course of the Senate's deliberations is insignificant in comparison with that of the speaker over the House, which elects him and consequently is willing to entrust him with wider powers.

In conclusion, attempts to establish a compromise between the parliamentary system with the executive controlled by the legislature, and the presidential system with the executive independent of the lawmakers, are almost inevitably doomed to fail. If tried, they are more likely to stir up jealousies between the two branches of the government and to produce confusion and deadlocks rather than to secure greater cooperation in framing and enacting legislation. Features essential to the one system, grafted onto the other, should not be expected to work successfully.

As Secretary David F. Houston said, after eight years in President Wilson's cabinet:

Nothing will be gained by trying to mix the two. We cannot get the advantages of the parliamentary system without taking everything that goes with it; and this would mean changes of a very radical nature for which our people are not yet ready.¹⁵

¹⁵ "Eight Years with Wilson, 1913-1921," in *World's Work*. 51: 360: He adds: "Such a system is more democratic in that it imposes scarcely any check on the expression of the will of the people. It would be more in harmony with our claims that we are a democratic people capable of governing ourselves, but it is not likely to be seriously considered now."

It is hardly necessary to add that the position outlined in this paper makes no evaluation of the relative merits of the two systems. It merely attempts to dispel the illusion held by some admirers of the parliamentary system, that we can obtain the advantages of the system and still keep the executive organically separate from the legislative branch.

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